

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE RESTRICTING THE SALE OF ELECTRONIC CIGARETTE PRODUCTS AND FLAVORED TOBACCO PRODUCTS AND MAKING OTHER MINOR AMENDMENTS TO ARTICLE XI OF CHAPTER 16 OF THE SALINAS MUNICIPAL CODE

City Attorney's Impartial Analysis

This Ordinance restricts the sale of electronic cigarette products and flavored tobacco products. If adopted, based on numerous reports and studies on the negative health effects of electronic cigarette products and the attractiveness of both electronic cigarette products and flavored tobacco products among youth, this Ordinance would prohibit the sale and the distribution of any electronic cigarette product or flavored tobacco product in the city of Salinas. A violation of the prohibitions is a nuisance subject to abatement and may be charged as an infraction or an administrative penalty. This Ordinance also provides minor amendments to existing Municipal Code provisions related to smoking and smoking prevention to modernize the Municipal Code and to consistently incorporate the newly imposed prohibitions.

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Salinas (City) has broad authority to maintain the public peace, health, and safety of its community and to preserve the quality of life for its residents and may make and enforce all regulations and ordinances using its police powers in order to do so; and

WHEREAS, “vaping” is inhaling aerosol from an electronic cigarette (e-cigarette) or other device that heats a liquid that can contain nicotine, marijuana (THC), cannabidiol, or other substances. E-cigarettes work by heating a liquid to produce an aerosol that users inhale into their lungs. The shapes and sizes of these devices vary and include colorful vape pens, modified tank systems, and pod-based devices that can look like USB flash drives, cell phones, credit card holders, and lighters. These devices are frequently referred to as e-cigarettes, e-cigs, vapes, vape pens, electronic vaporizers, pod mods, or pod systems; and

WHEREAS, on September 24, 2019, the California Department of Public Health (CDPH) issued a health advisory to inform the public about the imminent public health risks posed by vaping any product, including the use of electronic cigarettes (e-cigarettes). The CDPH reports that since June

2019, 178 people in California who have a history of vaping were hospitalized for severe breathing problems and lung damage, and four people have died.¹; and

WHEREAS, in its Health Advisory, the CDPH reported that lung damage can happen very suddenly to people who vape, including young healthy people who do not have lung disease or other health problems. Almost all people with lung damage from vaping say they vaped or “dabbed” the cannabis products THC and CBD in cartridges, waxes, oils, and other forms. Some people report vaping only nicotine. Many people report vaping a combination of both nicotine and cannabis products²; and

WHEREAS, the State of California does not ensure the safety of vaping devices through regulation. In California, licensed cannabis retailers are required to sell products obtained from a licensed cannabis manufacturer that have been tested by a licensed laboratory. Cannabis products sold by licensed sources are tested for a variety of chemicals, pesticides, microbial impurities, and heavy metals. Illegal cannabis dispensaries sell unregulated and untested cannabis products and, according to CDPH, should not be used³; and

WHEREAS, the Centers for Disease Control and Prevention (the “CDC”) reports that as of January 7, 2020, a total of 2,602 hospitalized e-cigarette, or vaping, product use-associated lung injury (EVALI) cases or deaths have been reported to CDC from all 50 states, the District of Columbia, and Puerto Rico and the U.S. Virgin Islands, with the average age of the patients being 27 years old. Fifty-seven (57) deaths have been confirmed in 27 states and the District of Columbia. In California, there were reports of over 150 EVALI cases or deaths reported to CDC⁴; and

WHEREAS, public health officials have identified vitamin E acetate, a sticky compound found in some THC vaping products, as a “potential toxin of concern” after it was detected in 29 out of 29 lung tissue samples tested for lung injury. As a consequence, the CDC has recommended that consumers stop vaping, particularly THC, and more-particularly anything purchased off the street⁵; and

¹<https://www.cdph.ca.gov/Programs/CCDC/CDPH%20Document%20Library/California%20Department%20of%20Public%20Health%20-%20Health%20Advisory%20September%202024,%202019.pdf>

² Id.

³ Id.

⁴ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

⁵ Lovelace, Jr., Berkeley. “People Are Still Dying From Mysterious Vaping Illness, Even as Outbreak Slows.” CNBC, January 9, 2020. <https://www.cnbc.com/2020/01/09/people-are-still-dying-from-mysterious-vaping-illness-as-outbreak-slows.html>

WHEREAS, the United States Food and Drug Administration is banning most fruit- and mint-flavored nicotine vaping products in an effort to curb teen use, with the exception of tobacco and menthol. The flavor ban applies to e-cigarettes, which use disposable cartridges filled with liquid nicotine; and

WHEREAS, the 2019 National Youth Tobacco Survey results on e-cigarette use show that more than 5 million United States middle and high school students are current e-cigarette users (having used within the last 30 days) with a majority reporting cartridge-based products as their usual brand⁶

WHEREAS, in a report based on an annual survey of drug, alcohol, and cigarette use and related attitudes among eighth, tenth, and twelfth graders in the United States, which includes 42,531 students from 396 public and private schools nationwide, the University of Michigan's Institute for Social Research, found that while opioid misuse, tobacco cigarette smoking, and alcohol use have declined among teens, the use of e-cigarettes continues to climb. The survey results showed that 20.8% of twelfth graders reported vaping marijuana in the past year, as well as 19.4% of tenth graders, and 7% of eighth graders. The survey also measured daily vaping of marijuana and found that 3.5% of twelfth graders, 3% of tenth graders, and 0.8% of eighth graders reported vaping marijuana daily⁷; and

WHEREAS, according to a 2016 report from the United States Surgeon General, e-cigarette use among youth and young adults has increased considerably in recent years, growing 900% among high school students from 2011 to 2015. These products have become the most commonly used form of tobacco among youth in the United States. Ingestion of e-cigarette liquids containing nicotine can cause acute toxicity and possibly death if the contents of refill cartridges or bottles containing nicotine are consumed⁸; and

⁶ e-Cigarette Use Among Youth in the United States, 2019. Karen E. Cullen, PhD;; Andrea S. Gentzke, PhD; Michael D. Sawdey, PhD, et al. November 5, 2019. [https://jamanetwork.com/journals/jama/article-abstract/2755265?guestAccessKey=54b2dc7d-3855-4728-a522-573083a5d2cd&utm_source=For The Media&utm_medium=referral&utm_campaign=ftm links&utm_content=fll&utm_term=110519](https://jamanetwork.com/journals/jama/article-abstract/2755265?guestAccessKey=54b2dc7d-3855-4728-a522-573083a5d2cd&utm_source=For%20The%20Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=fll&utm_term=110519)

⁷ monitoringthefuture.org/pubs.html

⁸ E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General, 2016. U.S. Department of Health and Human Services. https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf

WHEREAS, e-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults⁹; and

WHEREAS, the CDC and the American Journal of Preventative Medicine state that “[d]uring 2017-2018, current e-cigarette use increased 78%” among high school students¹⁰; and

WHEREAS, e-cigarettes have severe adverse health effects for both youth and adults.

a. According to the Surgeon General, “[m]ost e-cigarettes contain nicotine—the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain—which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”¹¹

b. E-cigarette use can also play a role in adolescent social maladjustment, including poor learning and academic performance, increased aggressive and impulsive behavior, poor sleep quality, attention deficits, impaired memory, cognition, and increased depression and suicidal ideation.¹²

c. Daily e-cigarette use is associated with increased risk of irreversible cardiovascular and lung disease through the inhalation of harmful chemicals.¹³

d. Secondhand emissions from e-cigarettes are also dangerous because they contain “nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.”¹⁴

⁹ Id.

¹⁰ Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018. Karen A. Cullen, PhD; Bridget K. Ambrose, PhD; Andrea S. Gentzke, PhD; Benjamin J. Apelberg, PhD; Ahmed Jamal, MBBS; Brian A. King, PhD <https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm>

¹¹ Surgeon General’s Advisory on E-Cigarette Use Among Youth (2008).

https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html

¹² Tobore TO. On the potential harmful effects of E-cigarettes (EC) on the developing brain: The relationship between vaping-induced oxidative stress and adolescent/young adults social maladjustment.

<https://www.ncbi.nlm.nih.gov/pubmed/31574388>

¹³ American Lung Association. The Impact of E-Cigarettes on the Lung (2011) <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>

¹⁴ Id.

e. E-cigarette use is dangerous for pregnant women and is a fetal risk factor. It is associated with an increased risk of smallness-for-gestational-age¹⁵; and

WHEREAS, other risks and injuries are attributable to the proliferation of e-cigarettes: e-cigarettes present a risk of burns and other injuries, usually from malfunctioning batteries. From 2015 to 2017, there were an estimated 2,035 e-cigarette explosion and burn injuries reported in U.S. hospital emergency rooms¹⁶; and

WHEREAS, on September 16, 2019, Governor Gavin Newsom signed Executive Order N-18-19 making various findings regarding e-cigarettes including vaping devices are the most commonly used tobacco products in California; more than 80% of high school students who consume tobacco use a vaping device; from 2016-2018 vaping among California high school students rose 27%; I 2018, 10.9% of California high school students reported using e-cigarettes and 14.7% reported using cannabis; 86.4% of California teenagers who consume tobacco products report using a flavored tobacco product; dramatic increases in youth vaping have been attributed to the appeal of flavored vapor and alternative nicotine products as well as advertising and promotional activities by companies targeted at youth; there are no manufacturing standards for non-cannabis vape products; there are over 15,000 e-liquid flavors for vaping devices, some which create an inflammatory response, some of which are cytotoxic to lung cells, and some of which may play a role in addiction; since August 2019, a clinical syndrome has emerged of respiratory failure in previously healthy individuals who had recently vaped illegally-obtained and produced cannabis products, and the cause of the syndrome is not yet known; as of September 10, 2019, 63 cases of this syndrome had been reported in California, in patients aged 14-70; and Californians suffering from this syndrome have experienced grievous harms to their health, including 28 patients requiring admission to an Intensive Care Unit, 19 patients requiring mechanical ventilation, and one death¹⁷; and

WHEREAS, information provided by the Monterey County Health Department shows there are direct costs to the community associated with smoking including an estimated \$2,999 as a direct cost per smoker (for hospital care, ambulatory care, nursing home care, prescriptions, and home

¹⁵ Cardenas V., Cen R, Clemens M, et al. Use of Electronic Nicotine Delivery Systems (ENDS) by Pregnant Women I: Risk of Small-For-Gestational-Age Birth. <http://www.tobaccoinduceddiseases.org/Use-of-Electronic-Nicotine-Delivery-Systems-ENDS-by-npregnant-women-I-Risk-of-small,106089,0,2.html>

¹⁶ Rossheim, ME, Livingston MD, Soule EK, Zeraye HA, Thombs DL. Electronic Cigarette Explosion and Burn Injuries, US Emergency Departments 2015-2017. <https://tobaccocontrol.bmj.com/content/28/4/472>

¹⁷ Executive Order N-18-19. <https://www.gov.ca.gov/wp-content/uploads/2019/09/9.16.19-EO-N-18-19.pdf>

health), in addition to costs associated with lost productivity. Smoking related deaths in Monterey County have totaled as many as 2,255 individuals¹⁸; and

WHEREAS, over 49 cities and counties in California have passed restrictions on the sale of flavored tobacco products, including some which have passed restrictions on the sale of menthol cigarettes, in addition to other flavored tobacco products, the cities of Santa Cruz, Capitola, and Pacific Grove, among them. Santa Cruz County has passed restrictions and the County of Monterey will consider passing restrictions; and

WHEREAS, Salinas was recently chosen as a “Blue Zone” and the Blue Zones Project Monterey County was established as a part of a national health initiative. The Blue Zones Project is focused on helping communities live a healthier lifestyle by developing community environments and through education on healthier choices; and

WHEREAS, the Salinas City Council finds and determines that the negative health effects associated with e-cigarettes and the use of flavored tobacco products among youth, primarily, are not consistent with the City’s participation in and commitment to the Blue Zones Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Recitals. The above recitals are true and correct and are by this reference incorporated herein in their entirety.

SECTION 2. Article XI of Chapter 16 of the Salinas Municipal Code is hereby amended to read as follows (shown by the deletion of text shown in ~~strikeout~~ form and by the addition of text shown in underline form):

Article XI. - Smoking Pollution Control; Restriction on the Sale and Distribution of Electronic Cigarette Products and Flavored Tobacco Products.

¹⁸ Max W, Sung h-Y, Shi Y, and Stak B. The Cost of Smoking in California, 2009. San Francisco, California: Institute for Health and Aging, University of California, San Francisco.

Sec. 16-11.010. - Findings and purpose.

The city council hereby finds as follows: The Environmental Protection Agency has designated secondhand smoke a Class A carcinogen. Tobacco smoke is a major contributor to indoor air pollution. The smoke generated by smokers is a significant health hazard for several populations who are subjected to the smoke, including pregnant women and their unborn children, infants, elderly persons, individuals with cardiovascular disease, individuals with impaired respiratory function including asthmatics, those with obstructive airway disease, and those who are allergic to smoke. The health hazards induced by involuntary smoking include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm. The health care costs produced by the ailments and diseases resulting from smoking are enormous and redound to the detriment of both innocent individuals and the public. The air pollution caused by smoking is an offensive annoyance and irritant to, and results in serious and significant physical discomfort of non-smokers, and constitutes a public nuisance in public places and work places. Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to businesses.

This article is enacted pursuant to California law for the purpose of restricting smoking and regulating in public places in order to reduce the hazards which smoking cause to those who involuntarily exposed thereto, to restrict and otherwise regulate smoking within work places for the protection of employees who are involuntarily exposed thereto.

This article is also enacted to encourage the responsible retailing of tobacco products, to discourage violations of law relating of tobacco products, to respond to a new wave of addition to electronic cigarettes and related products, to reduce vulnerability to unexplained illnesses associated with electronic cigarettes and related products, and to protect the public health and welfare.

Sec. 16-11.020. - Definitions.

For the purpose of this article, the following definitions shall apply:

(a) "Bar" means an enclosed area open for use by members of the general public which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a

restaurant may contain a bar, the term "bar" shall not include the restaurant dining area. A "bar" for the purpose of this definition does not include any area where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

(b) "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities under which legal, medical, dental, engineering, architectural or other professional services are delivered.

(c) "Dining area" means any enclosed area containing a counter or tables upon which food is served.

(d) "Distribute" or "Distribution" means the transfer, by any person other than a common carrier, of a Tobacco Product to another person for sale or personal consumption.

(e) "Electronic Cigarette Products" means any of the following products:

(1) any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(2) any component, part, or accessory of such a device or delivery system that is used during its operation.

(3) any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.

(4) any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.

(5) Electronic Cigarette Products shall not include any battery, battery charger, s
Sec. 16-11-030. - Smoking prohibitions—Public places.

Except as provided in this Article, it shall be unlawful for any person to smoke in an enclosed area in a place described by this Article, including, but not limited to:

(a) Common work areas occupied by employees performing clerical, technical, administrative or other business functions;

(b) Merchandise display areas, checkout stations, and counters and other pay stations;

(c) Hallways;

- (d) Restrooms;
- (e) Escalators, elevators and stairways;
- (f) Lobbies;
- (g) Reception areas;
- (h) Waiting rooms;
- (i) Classrooms, meeting or conference rooms, or lecture halls;
- (j) Other places in which members of the general public congregate for service or otherwise frequent;
- (k) Restaurants and restaurant-bar combinations, except that the following use may be designated as smoking-permitted until December 31, 1994:
 - (1) Those portions of the premises of restaurant-bar combinations with a Type 47 on-sale license from the California Alcoholic Beverage Control Department that are devoted primarily to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages;
 - (l) Theater-bar combinations and dinner theaters;
 - (m) Common areas in apartment buildings, condominiums, retirement facilities and nursing homes;
 - (n) Child care facilities that are not required to be licensed by the state;
 - (o) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public including but not limited to attorneys and other offices, banks, hotels and motels;
 - (p) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the city or any political subdivision of the state during such time as a public meeting is in progress; and
 - (q) Areas which share the air space, including but not limited to air conditioning, heating or other ventilation systems, entries, doorways, open windows or hallways, with other enclosed areas in which smoking is prohibited;

Sec. 16-11.040. - Stores.

The prohibitions contained in 16-11.030 shall be applicable to:

(a) Automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale;

(b) Grocery, specialty, department and other stores which sell goods or merchandise; and

(c) Service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video game, poolhalls, adult entertainment facilities and other amusement centers, and other similar establishments offering services to members of the general public.

For the purposes of this definition, the enclosed common areas or malls within retail shopping centers shall constitute a "store" within the meaning of this section.

Sec. 16-11.050. - Banks.

The prohibitions contained in Section 16-11.030 shall be applicable to banks, including savings and loan associations and other similar institutions which offer financial services to members of the general public.

Sec. 16-11.060. - Hotels.

The prohibitions contained in Section 16-11.030 shall be applicable at hotels and motels in which guests typically rent lodging for continuous periods less than thirty days. Seventy-five percent of the guest rooms in any hotel or motel shall be maintained as fixed nonsmoking rooms. The provisions of this section shall not apply to the remaining twenty-five percent of guest rooms and it shall not constitute a violation of Section 16-11.030 for a person to smoke in such rooms.

Sec. 16-11.070. - Terminals.

The prohibitions contained in Section 16-11.030 shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis.

Sec. 16-11.080. - Buses and taxis.

The prohibitions contained in Section 16-11.030 shall be applicable to operators and passengers within buses, taxicabs and any public transit conveyance operated by the city while such conveyances are physically within the incorporated area of the city.

Sec. 16-11.090. - Theaters.

The prohibitions contained in Section 16-11.30 shall be applicable to theaters, including motion picture theaters, theaters, meeting halls and auditoriums where motion picture or live

theatrical musical or dramatic productions, or lectures or other presentations are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided, that neither this section nor Section 16-11.030 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs.

Sec. 16-11.100. - Arenas and recreational areas.

(a) The prohibitions contained in Section 16-11.030 shall be applicable to enclosed sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

(b) It shall be unlawful for any person to smoke in any open-air recreational facility including but not limited to sports pavilions, gymnasiums, exercise facilities, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys, parks, recreational areas or trails, and other similar places where members of the general public assemble, when designated as nonsmoking by the owner thereof.

Sec. 16-11.110. - Recreation halls.

The prohibitions contained in Section 16-11.030 shall be applicable to recreation halls and other similar facilities where members of the general public play bingo or cards, dance or engage in other recreational, character building or cultural activities.

Sec. 16-11.120. - City meeting rooms.

The prohibitions contained in Section 16-11.030 shall be applicable to the chambers of the city council and each and every meeting room within a city building which is either utilized for the conduct of meetings by a city council, board or commission or otherwise made available for meetings attended by members of the general public.

Sec. 16-11.130. - Application of article to city-owned or leased facilities and vehicles.

Smoking is prohibited in all enclosed facilities and vehicles owned or leased by the city.

Sec. 16-11.140. - Places of exhibition.

The prohibitions contained in Section 16-11.030 shall be applicable to libraries, museums, aquariums, galleries, convention halls and similar facilities where members of the general public

assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services.

Sec. 16-11.150. - Health care facilities.

The prohibitions contained in Section 16-11.030 shall be applicable to waiting rooms, hallways, wards, and patient rooms of hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric, or counseling services are delivered to members of the general public.

Sec. 16-11.160. - Schools.

The prohibitions contained in Section 16-11.030 shall be applicable to any school or educational institution operated by a commercial enterprise or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.

Sec. 16-11.170. - Exceptions—Employee breakrooms.

Notwithstanding the provisions of Sections 16-11.030 through 16-11.160, breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(a) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building and meet all applicable state and federal ventilation standards.

(b) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this section, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(c) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

This section shall not be construed to require employers to provide reasonable accommodation to smokers or to provide breakrooms for smokers or nonsmokers.

It shall not constitute a violation of Section 16-11.030 for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

Sec. 16-11.180. - Exceptions—Locations.

The provisions of Sections 16-11.030 through 16-11.160 shall not be applicable to or be deemed to prohibit smoking in any of the following places:

(a) A private residence, including an attached or detached garage except when used as a child care facility that does not require a state license, health care, board and care or community foster care facility;

(b) Within any facility described by Sections 16-11.030 through 16-11.160 which is operated by the United States of America, the state of California, any municipal corporation other than the city, any political subdivision of the state of California, or any special district formed under the laws of the state of California for the local performance of governmental or other functions;

(c) Bars to the extent excepted by Labor Code Section 6404.5(f);

(d) Gaming clubs as defined in Business and Professions Code Section 19802 or bingo facilities as defined in Penal Code Section 326.5, if all of the following conditions are met:

(1) The facility is excepted by Labor Code Section 6404.5,

(2) The facility permits only adults eighteen years of age or older to enter, and

(3) Signs are posted in the manner prescribed by Section 16-109 authorizing smoking in any room which is fully enclosed by walls from floor to ceiling made available for the use and convenience of smokers, provided that such rooms shall not include an area greater than twenty-five percent of the total floor space committed to the primary activity, purpose or function of the facility and that the smoking permitted and smoking prohibited rooms are separately ventilated;

(e) Patient smoking areas in long-term health care facilities, as defined in Health and Safety Code Section 1418, provided that:

(1) Signs are posted in the manner prescribed by applicable law,

(2) The patient smoking areas are fully enclosed by walls from floor to ceiling,

(3) The smoking permitted and smoking prohibited rooms are separately ventilated, and

(4) The patient smoking rooms shall not include an area greater than twenty-five percent of the total floor space committed to the primary activity, purpose or function of the facility.

(f) It shall not constitute a violation of Section 16-11.130 for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

Sec. 16-11.190. - Posting.

(a) Each owner, operator, manager or other persons having control of an establishment or facility within which smoking is regulated by this article shall conspicuously post clear and prominent signs in every building or structure, as follows:

(1) Where smoking is prohibited throughout the building, structure or premises, a sign stating "No smoking" shall be posted at each entrance to the building, structure or premises;

(2) Where smoking is permitted in designated areas of a building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building, structure or premises.

(b) Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designed as being nonsmoking shall have signs designating such restriction conspicuously placed within the room.

(c) The rule of this article is that smoking within areas described by Sections 16-11.030 through 16-11.160 and Section 16-11.180 is prohibited unless expressly authorized by "Smoking Permitted" signs. All persons are presumed to know the law in general, and to be aware of the prohibitions contained in this article respecting smoking, in particular. Therefore, the absence of any "No Smoking" sign required by this article shall not excuse a violation of this article perpetrated by smoking or otherwise constitute a defense to any criminal or other proceeding commenced for the purpose of enforcing the provisions of this article against prohibited smoking.

Sec. 16-11.200. - Regulation of the sale and distribution of tobacco products.

(a) Any person, business, tobacco retailer or other establishment subject to this article shall post at the point of purchase of tobacco products plainly visible signs which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE IS PROHIBITED BY LAW." The letters of said signs shall be at least one-quarter inch high.

(b) Vending Machines Prohibited. No Tobacco Product shall be sold or distributed from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(c) No person, business, tobacco retailer or other establishment subject to this article shall locate, install, keep, maintain or use, or permit the location, installation, keeping,

maintenance or use upon his, her, or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of the ordinance codified in this article shall be removed within thirty days after the effective date of the ordinance codified in this article.

(d) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this article who violates any provision of this section shall be deemed guilty of a misdemeanor.

(e) Flavored Tobacco Products.

(1) No Retailer, nor any of their agents or employees, shall sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including, but not limited to, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, honey, an alcoholic drink, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced by the Tobacco Product.

(2) A Tobacco Product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) of this subsection (i.e., is a Flavored Tobacco Product) if:

(i) The product's manufacturer, a Retailer, or any other person associated with the manufacture or sale of Tobacco Products makes or disseminates public statements or claims to the effect that the product has or produces a characterizing flavor or aroma, other than tobacco; or

(ii) The product's label, labeling, or packaging includes a statement or claim—including text and/or images used to communicate information—that the product has or produces a characterizing flavor or aroma, other than tobacco.

(iii) There shall be a rebuttable presumption that a Retailer in possession of four (4) or more Flavored Tobacco Products possesses such Flavored Tobacco Products with intent to sell or offer for sale.

(f) Prohibition on Sale or Distribution of Tobacco Products to Individuals Under 21. No Retailer shall sell or distribute any Tobacco Product to any individual who is under 21 years of age.

(g) Prohibition on Sale or Distribution of Electronic Cigarette Products. No Retailer shall sell or distribute Electronic Cigarette Products.

Sec. 16-11.210. - Enforcement.

(a) Any violation of this Article is hereby declared to be a public nuisance
(b) Causing, permitting, aiding, abetting, or concealing a violation of this Article shall also constitute a violation of this Article. (c) Violations of this Article may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For purposes of the civil remedies provided in this Article, each day on which a Tobacco Product is offered for sale in violation of this Article, and each individual retail Tobacco Product that is sold or distributed in violation of this Article, shall constitute a separate violation of this Article. (d) Any person found guilty of violating any provision of this Article shall be deemed guilty of an infraction. Alternatively, and in the discretion of the City Attorney, violations of this Article may be prosecuted administratively pursuant to the Municipal Code. Sec. 16-11.220. - Voluntary nonsmoking establishments.

Notwithstanding any other provision of this article to the contrary, any owner, operator, manager or other person who controls any establishment described in this article may declare that entire establishment as a nonsmoking establishment. Violation of such voluntary nonsmoking policy or enforceable only by the owner, operator, manager, or other person who controls the establishment.

Sec. 16-11.230. - Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Nothing in this Article shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by, or in conflict with, federal or state law, rules, or regulations.

SECTION 3. California Environmental Quality Act (CEQA). The Salinas City Council hereby finds and determines that the adoption of this ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) which provides that a project does not include general policy and

procedure making. The adoption of this ordinance is also not a project pursuant to CEQA Guidelines Section 153778(b)(5) which provides that a project does not include organizational and administrative action of government which will not result in direct or indirect physical changes in the environment.

In the alternative, the Salinas City Council finds and determines that if the adoption of this ordinance is considered a project, it is subject to exemption. It can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment and therefore the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) because CEQA applies only to projects which have the potential for causing a significant effect on the environment [CEQA Guidelines Section 15061(b)(3)]. Staff is directed to file a Notice of Exemption with the Monterey County Clerk.

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

SECTION 5. Publication. The City Clerk shall cause this ordinance to be published in a newspaper of general circulation, published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code.

SECTION 6. Effective Date. This ordinance shall be effective thirty (30) days from and after the date of its adoption.

PASSED AND ADOPTED this 21st day of January, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney