

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. 21-1182

COMMITTEE OF REFERENCE:

4 Safety, Housing, Education and Homelessness

5
6 A BILL

7
8 For an ordinance amending article XI of chapter 24, D.R.M.C., to ban the sale of
9 flavored tobacco products and accessories.

10
11 **WHEREAS**, the 2009 federal Family Smoking Prevention and Tobacco Control Act
12 (“Tobacco Control Act”) banned the manufacture of candy- and fruit-flavored cigarettes largely
13 because these flavored products are marketed to youth and young adults and younger smokers
14 were more likely than older smokers to have tried these products;

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

18 **WHEREAS**, by masking the natural harshness and taste of tobacco, menthol and other
19 flavors make these products easier to use, harder to quit, and more appealing to youth;

20 **WHEREAS**, due to tobacco companies’ well-documented history of predatory marketing,
21 youth, people of color, people with low-incomes, and people who identify as LGBTQ+ are
22 significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and
23 disproportionately bear the burden of tobacco-related harm;

24 **WHEREAS**, more than four in five Black smokers and seven in ten young LGBTQ+
25 smokers use menthol cigarettes;

26 **WHEREAS**, menthol cigarettes are of particular concern because despite decreases in
27 overall cigarette use, the proportion of cigarette smokers who use menthol cigarettes continues to
28 rise;

29 **WHEREAS**, scientific reviews by the federal Food and Drug Administration (“FDA”) and the
30 Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes
31 likely increases the prevalence of smoking among the entire population, but especially among
32 youth, African Americans, and possibly Hispanic and Latino individuals; and that menthol
33 cigarettes are associated with increased initiation and progression to regular cigarette smoking,

1 increased dependence on cigarettes, and reduced success in smoking cessation, especially
2 among African American menthol smokers;

3 **WHEREAS**, smoking menthol cigarettes is also associated with being more likely to use
4 cigars and reduced likelihood of successfully quitting smoking.

5 **WHEREAS**, consumption of flavored tobacco products has grown in recent years;

6 **WHEREAS**, research studies support the efficacy of policies restricting the sale of flavored
7 tobacco products;

8 **WHEREAS**, well-enforced laws aimed at businesses that sell tobacco products are more
9 equitable and provide greater public health benefits than laws enforced against individuals. For
10 this reason, more than forty of the nation's leading public health organizations have called for state
11 and local governments to reform or eliminate laws, policies, and enforcement practices that target
12 individuals and endorsed holding businesses and industry actors accountable for violations of
13 tobacco control laws; and

14 **WHEREAS**, the City and County of Denver finds that a narrow prohibition on the sale of
15 flavored tobacco products by licensed tobacco retailers is appropriate to protect public health and
16 advance health equity. The City and County of Denver does not intend and nothing in this
17 Ordinance shall be interpreted to authorize enforcement against any person not operating as or on
18 behalf of a retail tobacco store.

19

20 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

21 **Section 1.** That article XI, division 1, of Chapter 24, D.R.M.C., shall be amended by
22 deleting the language stricken and adding the language underlined, to read as follows:

23

24 **Sec. 24-401. - Definitions.**

25 (a) *Board* means the board of public health and environment of the City and County of
26 Denver.

27 (b) *Director* means the director of the department of excise and licenses of the City and
28 County of Denver and the director's authorized representative.

29 (c) *Flavored tobacco product* means any tobacco product, or component or part of
30 tobacco product, that imparts a taste or smell, other than the taste or smell of tobacco, either prior
31 to, or during the consumption of, a tobacco product, including but not limited to, any taste or smell
32 relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy,
33 dessert, alcoholic beverage, herb, or spice; provided, however, that a tobacco product shall not be

1 determined to be a flavored tobacco product solely because of the use of additives or flavorings or
2 the provision of ingredient information.

3 (d) *Hookah* means a type of waterpipe, used to smoke shisha or other tobacco products,
4 with a long flexible tube for drawing aerosol through water. Components of a hookah may include
5 heads, stems, bowls, and hoses.

6 (e) *Hookah tobacco retailer* means a tobacco retailer that is engaged in the retail sale of
7 hookah, hookah smoking accessories, or tobacco intended to be smoked in a hookah, which
8 includes hookah tobacco, shisha tobacco, waterpipe tobacco, maassel, narghile, and argileh.
9 Hookah tobacco retailer includes facilities that permit the consumption of hookah on the premises
10 by customers.

11 (f) *Pipe tobacco* means any tobacco that, because of its appearance, type, packaging,
12 or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco
13 to smoke in a pipe, excluding any tobacco product which, because of its appearance, type,
14 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers
15 as tobacco for making cigarettes, including roll-your-own cigarettes.

16 (eg) *Manager* means the manager of the department of public health and environment of
17 the City and County of Denver and the manager's authorized representative.

18 (eh) *Person* means any firm, corporation, association, or other organization acting as a
19 group or unit as well as an individual. It shall also include an executor, administrator, trustee,
20 receiver, or other representative appointed according to law.

21 (i) *Natural cigar* means any cigar that is handmade, is not mass produced by use of
22 mechanization, has a wrapper that is made entirely from whole tobacco leaf. A natural cigar does
23 not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

24 (ej) *School* means a public or private preschool or a public or private elementary, middle,
25 junior high, or high school.

26 (fk) *Retail tobacco store* means a business of any kind that sells, gives, delivers, or
27 furnishes tobacco products to a user or consumer.

28 (gl) *Tobacco product* means:

- 29 (1) Any product containing tobacco or nicotine, natural or synthetic, or that is made or
30 derived from tobacco that may be used to introduce tobacco or nicotine into the human body,
31 including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing
32 tobacco, dipping tobacco, dissolvable tobacco products, and nicotine-enhanced products;
33 (2) Any electronic device that may be used to deliver nicotine, natural or synthetic, to the

1 person inhaling from the device, including any solution, compound, or other substance containing
2 nicotine to be used with the device; and

3 (3) Any other preparation of tobacco and any product or formulation of matter containing
4 nicotine, natural or synthetic, that may be used to introduce nicotine into the human body.

5 Excluded from this definition are any ~~products specifically approved by the United States~~
6 ~~Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco~~
7 ~~dependence or for other medical purposes, when these products are being marketed and sold~~
8 ~~solely for such approved purpose.~~ drugs, devices, or combination products authorized for sale by
9 the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and
10 Cosmetic Act.

11 (i) *Vending machine* means any mechanical, electric or electronic device that, on
12 insertion of money, tokens or any other form of payment, automatically dispenses tobacco
13 products.
14

15 **Sec. 24-404. - Sale of flavored tobacco products prohibited.**

16 (a) It shall be unlawful for any retail tobacco store, or for any person acting as an officer,
17 authorized agent, representative, or employee of such retail tobacco store, to sell, offer for sale,
18 give, barter, deliver or furnish to a user or consumer any flavored tobacco product or samples of
19 such products. The board may adopt rules and regulations as may be necessary for the protection
20 of public health related to this section.

21 (b) This section shall not apply to the following flavored tobacco products:

22 (1) Tobacco intended to be smoked in a hookah that is sold at a hookah tobacco
23 retailer, provided the hookah tobacco retailer prohibits entry to any individual under 21 years old.

24 (2) Pipe tobacco or natural cigars sold or displayed by a person who primarily engages
25 in the business of selling cigars, pipe tobacco, cigar related accessories, and pipe tobacco related
26 accessories.

27 (c) A violation of this section is declared to be a noncriminal violation.
28

29 **Sec. 24-4045. - Access to tobacco products.**

30 (a) It shall be unlawful for any person to sell or display or permit to be sold or displayed
31 any tobacco product in such a manner that it can be reached or purchased by customers without it
32 being requested from, and provided by, an employee of the establishment.

33 (b) This section 24-4045 shall not apply to cigars or pipe tobacco sold or displayed by a

1 person who primarily engages in the business of selling cigars, pipe tobacco, cigar related
2 accessories, and pipe tobacco related accessories, or the rental of on-premises humidors or other
3 cigar storage units.

4
5 **Sec. 24-4056. - Packaging of tobacco products.**

6 (a) It shall be unlawful for any person to sell tobacco products in any form or condition
7 other than in the packaging provided by the manufacturer.

8 (b) It shall be unlawful for any person to permit or allow that person's agent, servant, or
9 employee to sell tobacco products in any form or condition other than in the packaging provided by
10 the manufacturer.

11 (c) This section 24-4056 shall not apply to cigars or pipe tobacco sold by a person who
12 primarily engages in the business of selling cigars, pipe tobacco, cigar related accessories, and
13 pipe tobacco related accessories, or the rental of on-premises humidors or other cigar storage
14 units.

15
16 **Sec. 24-4067. - Suspension of right to sell tobacco products.**

17 (a) Upon a determination that a violation of this division 1 has occurred at a given
18 location, the manager may issue a warning that a future violation within one (1) year may result in
19 the suspension of the person's right to sell tobacco products where the violation occurred.

20 (b) Upon a determination that a second violation of this division 1 has occurred at the
21 same location within one (1) year after the first violation, the manager may suspend the person's
22 right to sell tobacco products for a period not to exceed thirty (30) days at the location where the
23 violations occurred. Such suspension order shall be effective thirty (30) days from the date of
24 issuance.

25 (c) Upon a determination that a third violation of this division 1 has occurred at the same
26 location within one (1) year after the first violation, or upon a determination of a violation of the
27 terms or conditions of an order suspending sales privileges entered pursuant to the provisions of
28 this section, the manager may suspend the person's right to sell tobacco products at the location
29 where the violations occurred for a period not to exceed sixty (60) days. Such suspension order
30 shall be effective thirty (30) days from the date of issuance.

31 (d) Upon a determination that a fourth or subsequent violation of this division 1 has
32 occurred at the same location within a one-year period, or upon a determination that two (2) or
33 more violations of the terms or conditions of an order suspending sales privileges entered

1 pursuant to the provisions of this section have occurred, the manager may suspend the person's
2 right to sell tobacco products at the location where the violations occurred for a period not to
3 exceed one (1) year. Such suspension order shall be effective thirty (30) days from the date of
4 issuance.

5 (e) The manager may take any actions the manager deems necessary to ensure
6 compliance with a suspension of the right to sell tobacco products, including, but not limited to,
7 requiring the person to remove all tobacco products from the sales area of the location where
8 tobacco is sold for the duration of the suspension, and inspecting any and all documentation
9 relevant to the suspension. The manager may post, in a prominent place at the premises of the
10 location where tobacco sales have been suspended, a notice that tobacco sales have been
11 suspended for the duration of the suspension.

12

13 **Sec. 24-408. - Reporting.**

14 *Report to city council.* The manager shall report in writing to city council by July 1 of each year,
15 beginning in 2023, regarding the implementation and effectiveness of D.R.M.C, Sec. 24-404.

16

17 **Secs. 24-4079—24-419. - Reserved.**

18

19 **Section 2. Effective Date.** This ordinance shall become effective July 1, 2022.

20

21 COMMITTEE APPROVAL DATE: _____, 2021.

22 MAYOR-COUNCIL DATE: _____, 2021.

23 PASSED BY THE COUNCIL _____ 2021

24 _____ - PRESIDENT

25 APPROVED: _____ - MAYOR _____ 2021

26 ATTEST: _____ - CLERK AND RECORDER,
27 EX-OFFICIO CLERK OF THE
28 CITY AND COUNTY OF DENVER

29

30 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2021; _____ 2021

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32 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: November 23, 2021

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Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kristin M. Bronson
City Attorney

BY: _____, _____ City Attorney DATE: _____

DRAFT