

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2024

COUNCIL BILL NO. 24-1765  
COMMITTEE OF REFERENCE:  
Safety, Housing, Education and Homelessness

6 A BILL

8 **For an ordinance amending Chapters 24 and 34 of the Revised Municipal Code**  
9 **regarding the sale of tobacco products including flavored tobacco products.**

11 **WHEREAS**, the City and County of Denver finds that a narrow prohibition on the sale  
12 of flavored tobacco products by licensed tobacco retailers is appropriate to protect public health  
13 and advance health equity; and

14 **WHEREAS**, by delaying the effective date of the ordinance by 90 days, the Department of  
15 Public Health and Environment will have time to educate businesses and encourage voluntary  
16 compliance.

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

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

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

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

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

27 (c) *Flavored tobacco product* means any tobacco product that imparts a cooling sensation,  
28 numbing sensation, taste, or smell, other than the taste or smell of tobacco, that is distinguishable  
29 by an ordinary consumer either prior to or during the consumption of a tobacco product, including  
30 but not limited to any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa,  
31 vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall not  
32 be determined to be a flavored tobacco product solely because of the use of additives or flavorings  
33 or the provision of ingredient information.

34 (d) *Hookah* means a type of waterpipe used to smoke shisha tobacco, maassel,

1 narghile, or argileh, with a long flexible tube for drawing aerosol through water. Components of a  
2 hookah may include heads, stems, bowls, and hoses.

3 (e) *Hookah tobacco* means shisha tobacco, maassel, narghile, and argileh intended to be  
4 smoked in a hookah.

5 (ef) *Manager* means the manager of the department of public health and environment of  
6 the City and County of Denver and the manager's authorized representative.

7 (g) *Nicotine* means any form of the chemical nicotine, including any salt or complex,  
8 regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic  
9 alkaloids and nicotine analogs such as metatine.

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

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

18 (j) *Premium cigar* means a cigar that meets all the following characteristics:

19 (1) is handmade or hand rolled;

20 (2) is not mass produced through the use of mechanization;

21 (3) has a wrapper that is made entirely from whole tobacco leaf;

22 (4) has a filler composed of at least fifty percent natural long-leaf filler tobacco;

23 (5) does not have a filter, tip, or nontobacco mouthpiece;

24 (6) is capped by hand;

25 (7) weighs more than 6 pounds per 1,000 units; and

26 (8) has a wholesale price per cigar of:

27 a. for the calendar year ending December 31, 2024, twelve dollars (\$12), and

28 b. for each calendar year thereafter, twelve dollars (\$12) plus the amount reflecting  
29 any percentage increase in the U.S. Department of Labor's Bureau of Labor Statistics Consumer  
30 Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor  
31 index.

32 (ek) *School* means a public or private preschool or a public or private elementary, middle,  
33 junior high, or high school.

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

(g) *Tobacco product* means:

(1) Any product containing tobacco or nicotine or that is made or derived from tobacco that may be used to introduce tobacco or nicotine into the human body, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, dissolvable tobacco products, and nicotine-enhanced products;

(2) Any electronic device that may be used to deliver nicotine to the person inhaling from the device, including any solution, compound, or other substance containing nicotine to be used with the device; and

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

Excluded from this definition are ~~any products specifically approved the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence or for other medical purposes, when the products are being marketed and sold solely for such approved purpose~~ any 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.

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

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

(a) It shall be unlawful for any retail tobacco store to sell, offer for sale, give, barter, deliver or furnish to a user or consumer any flavored tobacco product or samples of such products.

(b) This section shall not apply to hookah tobacco.

(c) A violation of this section shall be a noncriminal violation upon which the manager is authorized to assess civil penalties as provided in article I, chapter 24.

(d) Upon review on appeal pursuant to article I, chapter 24, there shall be a presumption, rebuttable by clear and convincing evidence, that a tobacco product is a flavored tobacco product if a retail tobacco store, tobacco product manufacturer, or any employee or agent of a retail tobacco store or tobacco product manufacturer has:

(1) Made a public statement or claim that the tobacco product imparts a flavor other than tobacco, or imparts a cooling or numbing sensation, during consumption of that product;

(2) Used text or images, or both, on the tobacco product's labeling or packaging to

1 explicitly or implicitly indicate that the tobacco product imparts a flavor other than tobacco or imparts  
2 a cooling or numbing sensation during consumption of that product; or  
3 (3) Taken action directed to consumers that would be reasonably expected to cause  
4 consumers to believe the tobacco product imparts a flavor other than tobacco or imparts a cooling  
5 or numbing sensation during consumption of that product.

6  
7 **Sec. 24-4045. - Access to tobacco products.**

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

11 (b) This section ~~24-404~~ shall not apply to premium cigars or pipe tobacco sold or displayed  
12 by a person who primarily engages in the business of selling cigars, pipe tobacco, cigar related  
13 accessories, and pipe tobacco related accessories, or the rental of on-premises humidors or other  
14 cigar storage units.

15  
16 **Sec. 24-4056. - Packaging of tobacco products.**

17 (a) It shall be unlawful for any ~~person~~ retail tobacco store to sell tobacco products in any  
18 form or condition other than in the packaging provided by the manufacturer.

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

22 (b) This section ~~24-405~~ shall not apply to premium cigars or pipe tobacco sold by a person  
23 who primarily engages in the business of selling cigars, pipe tobacco, cigar related accessories, and  
24 pipe tobacco related accessories, or the rental of on-premises humidors or other cigar storage units.

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26 **Sec. 24-4067. - Suspension of right privilege to sell tobacco products.**

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

30 ~~(b) Upon a determination that a second violation of this division 1 has occurred at the same~~  
31 ~~location within one (1) year after the first violation t~~The manager may suspend the person's right  
32 retail tobacco store's privilege to sell tobacco products for a period not to exceed thirty (30) days at  
33 the a location where the multiple violations of this division have occurred. Such suspension order

shall be effective thirty (30) days from the date of issuance and shall not exceed the following number of days:

(1) For a suspension order issued on or before December 31, 2026,

a. For a second violation within one (1) year at the same location, thirty (30) days;

b. For a third violation within one (1) year at the same location, sixty (60) days; and

c. For a fourth or subsequent violation within one (1) year at the same location, one (1) year.

(2) For a suspension order issued on or after January 1, 2027,

a. For a second violation within two (2) years at the same location, thirty (30) days;

b. For a third violation within two (2) years at the same location, sixty (60) days; and

c. For a fourth or subsequent violation within two (2) years at the same location, one (1) year.

(3) For a suspension order issued on or after January 1, 2028,

a. For a second violation within three (3) years at the same location, thirty (30) days;

b. For a third violation within three (3) years at the same location, sixty (60) days; and

c. For a fourth or subsequent violation within three (3) years at the same location, one (1) year.

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

~~(d) Upon a determination that a fourth or subsequent violation of this division 1 has occurred at the same location within a one-year period, or upon a determination that two (2) or more violations of the terms or conditions of an order suspending sales privileges entered pursuant to the provisions of this section have occurred, the manager may suspend the person's privilege to sell tobacco products at the location where the violations occurred for a period not to exceed one (1) year. Such suspension order shall be effective thirty (30) days from the date of issuance.~~

(ec) The manager may take any actions the manager deems necessary to ensure

compliance with a suspension of the privilege to sell tobacco products, including, but not limited to, requiring the person to remove all tobacco products from the sales area of the location where tobacco is sold for the duration of the suspension, and inspecting any and all documentation relevant to the suspension. The manager may post, in a prominent place at the premises of the location where tobacco sales have been suspended, a notice that tobacco sales have been suspended for the duration of the suspension.

(d) It shall be a violation of this division if a retail tobacco store violates or fails to comply with the terms and conditions of a suspension order. If the manager determines that an order issued pursuant to this division has been violated or that the retail tobacco store has failed to comply with a suspension order, the manager may reimpose the originally ordered suspension up to the full term. Any reimposed suspension shall be in addition to any penalty ordered for a new violation.

#### **Sec.24-408. - Liability.**

A retail tobacco store shall be liable for the actions of their officers, agents, representatives or employees regarding the sale, offer to sell, and furnishing of tobacco products on the premises.

#### **Sec. 24-409. - Reporting.**

Report to city council. The manager shall report in writing to city council by July 1 of each year, beginning in 2026, regarding the implementation and effectiveness of section 24-404.

#### **Secs. 24-410—24-419. - Reserved.**

**Section 2.** That article IV, chapter 34 of the code be amended by deleting the language stricken and adding the language underlined, to read as follows:

#### **Sec. 34-64. – Purchase, possession and admission to certain places**

(a) It shall be unlawful for any minor to purchase or procure any material which any person is forbidden by law to sell give, deliver, or furnish to minors, provided however that this subsection shall not apply to tobacco products, as defined in article XI, chapter 24.

(b) It shall be unlawful for any minor to gain admission to places prohibited to minors.

~~(c) It shall be unlawful for any minor to purchase or procure any cigarettes or any other tobacco product.~~

~~(d) It shall be unlawful for any minor to possess any cigarettes or any other tobacco~~

1 ~~product.~~ A violation of this section is hereby declared to be a noncriminal violation.

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3 **Section 3. Effective Date.** This ordinance shall become effective 90 days after final  
4 publication.

5 COMMITTEE APPROVAL DATE: December 4, 2024

6 MAYOR-COUNCIL DATE: N/A

7 PASSED BY THE COUNCIL \_\_\_\_\_

8 \_\_\_\_\_ - PRESIDENT

9 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

10 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
11 EX-OFFICIO CLERK OF THE  
12 CITY AND COUNTY OF DENVER

13 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_; \_\_\_\_\_

14 PREPARED BY: Anshul Bagga, Assistant City Attorney DATE: November 5, 2024

15 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
16 City Attorney. We find no irregularity as to form and have no legal objection to the proposed  
17 ordinance. The proposed ordinance is **not** submitted to the City Council for approval pursuant to §  
18 3.2.6 of the Charter.

19

20 Kerry Tipper, City Attorney

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22 BY: Anshul Bagga, Assistant City Attorney DATE: Dec 5, 2024