

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

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

18 **WHEREAS**, by masking the natural harshness and taste of tobacco, menthol and other flavors  
19 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, youth,  
21 people of color, people with low-incomes, and people who identify as LGBTQ+ are significantly more  
22 likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the  
23 burden of tobacco-related harm;

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

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

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

1 American menthol smokers;

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

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

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

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

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

18

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

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

22

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

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

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

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

1 ingredient information.

2 (ed) *Manager* means the manager of the department of public health and environment of the  
3 City and County of Denver and the manager's authorized representative.

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

7 (ef) *School* means a public or private preschool or a public or private elementary, middle,  
8 junior high, or high school.

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

11 (gh) *Tobacco product* means:

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

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

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

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

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

28

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

30 (a) It shall be unlawful for any retail tobacco store, or for any person acting as an officer,  
31 authorized agent, representative, or employee of such retail tobacco store, to sell, offer for sale, give,  
32 barter, deliver or furnish to a user or consumer any flavored tobacco product or samples of such  
33 products. The board may adopt rules and regulations as may be necessary for the protection of public

1 health related to this section.

2 (b) A violation of this section is declared to be a noncriminal violation.

3  
4 **Sec. 24-4045. - Access to tobacco products.**

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

8 (b) This section 24-4045 shall not apply to cigars or pipe tobacco sold or displayed by a  
9 person who primarily engages in the business of selling cigars, pipe tobacco, cigar related  
10 accessories, and pipe tobacco related accessories, or the rental of on-premises humidors or other  
11 cigar storage units.

12  
13 **Sec. 24-4056. - Packaging of tobacco products.**

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

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

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

22  
23 **Sec. 24-4067. - Suspension of right to sell tobacco products.**

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

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

31 (c) Upon a determination that a third violation of this division 1 has occurred at the same  
32 location within one (1) year after the first violation, or upon a determination of a violation of the terms  
33 or conditions of an order suspending sales privileges entered pursuant to the provisions of this

1 section, the manager may suspend the person's right to sell tobacco products at the location where  
2 the violations occurred for a period not to exceed sixty (60) days. Such suspension order shall be  
3 effective thirty (30) days from the date of issuance.

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

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

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18 **Sec. 24-408. - Reporting.**

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

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

23  
24 **Section 2. Effective Date.** This ordinance shall become effective July 1, 2022.

25  
26 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2021.

27 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2021.

28 PASSED BY THE COUNCIL \_\_\_\_\_ 2021

29 \_\_\_\_\_ - PRESIDENT

30 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2021

31 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
32 EX-OFFICIO CLERK OF THE  
33 CITY AND COUNTY OF DENVER  
34

1 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2021; \_\_\_\_\_ 2021

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3 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: October 20, 2021

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5 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
6 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
7 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §  
8 3.2.6 of the Charter.

9

10 Kristin M. Bronson

11 City Attorney

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13 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney DATE: \_\_\_\_\_

DRAFT