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The City Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1. Section 5.78.030 (Definitions) in Chapter 5.78 (Tobacco Retailers) is amended to

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

“Consumer” means a person who purchases a Tobacco Product for consumption and not for Sale to another.

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1 “Electronic Smoking Device” has the same meaning as the term is defined in Hermosa Beach
2 Municipal Code Section 8.40.010.

3 “Enforcement Official” means any member of the Hermosa Beach Code Enforcement
4 Department, the Hermosa Beach Police Department, the California Department of Health Services,
5 the California Alcohol Beverage Control Department, and the Los Angeles County Sheriff’s
6 Department, or their designees.

7 “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

8 “Little Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in
9 tobacco or any substance containing tobacco and weighing no more than three pounds per thousand.

10 “Little Cigar” includes, but is not limited to, any Tobacco Product known or labeled as “small cigar”
11 or “little cigar.”
12

13 “Package” means a pack, box, carton, or container of any kind or, if no other container, any
14 wrapping (including cellophane) in which a Tobacco Product is sold or offered for Sale to a
15 Consumer.
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17 “Person” means any individual, partnership, co-partnership, firm, association, joint stock
18 company, corporation, or combination of the above in whatever form or character.

19 “Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by
20 a pharmacist licensed by the State of California in accordance with the Business and Professions
21 Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail
22 establishment sells other retail goods in addition to prescription pharmaceuticals.
23

24 “Restaurant” means a place where people pay to sit and eat meals that are cooked and served on
25 the premises. “Restaurant” does not include a deli where prepared foods are ordered, purchased, and
26 picked up by a Person to be eaten outside or off the premises without service.
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1 “Sale” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial
2 purpose, in any manner or by any means whatsoever.

3 “Self-Service Display” means the open display or storage of Tobacco Products in a manner that
4 is physically accessible in any way to the general public without the assistance of the retailer or
5 employee of the retailer and a direct Person-to-Person transfer between the purchaser and the retailer
6 or retailer’s agent or employee. A vending machine is a form of Self-Service Display.

7 “Smoking” means the combustion, electrical ignition or vaporization and/or inhaling, exhaling,
8 burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah,
9 Electronic Smoking Device, or any plant product intended for human inhalation that facilitates the
10 release of gases, particles, or vapors into the air.

11 “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of
12 Tobacco Products.
13

14 “Tobacco Product” means:
15

16 (1) Any product containing, made, or derived from tobacco or nicotine that is intended
17 for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled,
18 snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes,
19 cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
20

21 (2) Any Electronic Smoking Device, with or without nicotine.

22 (3) Notwithstanding any provision of subsections (1), (2) and (3) to the contrary,
23 “Tobacco Product” includes any component, part, or accessory of a Tobacco Product,
24 whether or not sold separately. “Tobacco Product” does not include any product that has
25 been approved by the United States Food and Drug Administration for Sale as a tobacco
26 cessation product or for other therapeutic purposes where such product is marketed and sold
27 solely for such an approved purpose.
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1 “Tobacco Retailer” means any Person who sells, offers for Sale, or does or offers to exchange
2 for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco
3 Retailing” shall mean the doing of any of these things. This definition is without regard to the
4 quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered
5 for exchange.

6 **Section 2.** Section 5.78.100 (Operating requirements) in Chapter 5.78 (Tobacco Retailers) is
7 amended to read as follows:
8

9 **5.78.100 Operating requirements.**

10 The following operating requirements shall be deemed conditions of any Tobacco Retailer
11 license issued pursuant to the provisions of this Chapter, and failure to comply with any such
12 requirement shall be grounds for suspension, revocation, or the imposition of administrative fines
13 in accordance with Section 5.78.120 of this Chapter.
14

15 **A.** Posting of license. Each license issued pursuant to this Chapter shall be prominently
16 displayed in a publicly visible location at the permitted location.

17 **B.** Retail Sales to Persons under twenty one prohibited. No Person engaged in Tobacco
18 Retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any
19 Tobacco Product to any Person who is under the legal age under state law to purchase and
20 possess Tobacco Products, which is age twenty-one (or eighteen if active military).
21

22 **C.** Positive identification required. No Tobacco Retailer shall sell or transfer a Tobacco
23 Product to any Person who appears to be under the age of thirty (30) years old without first
24 examining the identification of that Person to confirm that Person is at least the minimum age
25 under state law to purchase and possess the product. The Tobacco Retailer or agent thereof shall
26 refuse the Sale or transfer of any Tobacco Product to any Person who appears to be under the
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1 age of thirty (30) years old, who fails to present valid, legal photo identification prior to the Sale
2 or transfer.

3 **D.** Minimum age for Persons selling tobacco. No Person who is younger than twenty-
4 one shall engage in Tobacco Retailing.

5 **E.** Self-Service Displays prohibited. Tobacco Retailing by means of a self-service
6 display is prohibited.

7 **F.** Electronic Smoking Device.

8
9 1. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco
10 Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or
11 offer for sale, any Electronic Smoking Device. The prohibition in the preceding sentence
12 shall not apply to a retailer that permits only patrons 21 years of age or older, or active
13 duty military personnel who are eighteen (18) years of age or older, to enter the location
14 where the Tobacco Product is sold.

15
16 2. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four
17 or more Electronic Smoking Devices, including but not limited to individual Electronic
18 Smoking Devices, packages of Electronic Smoking Devices, or any combination
19 thereof, possesses such Electronic Smoking Devices with intent to sell or offer for sale.

20
21 **G.** Flavored Tobacco Products.

22 1. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco
23 Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or
24 offer for sale, any Flavored Tobacco Product.

25
26 2. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four
27 or more Flavored Tobacco Products, including but not limited to individual Flavored
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1 Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof,
2 possesses such Flavored Tobacco Products with intent to sell or offer for sale.

3 3. There shall be a rebuttable presumption that a Tobacco Product is a Flavored
4 Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a
5 Tobacco Retailer or Manufacturer has done the following:

6 (a) made a public statement or claim that the Tobacco Product imparts a
7 Characterizing Flavor;

8 (b) used text and/or images on the Tobacco Product's Labeling or Packaging to
9 explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing
10 Flavor; or
11

12 (c) taken action directed to consumers that would be reasonably expected to cause
13 consumers to believe the Tobacco Product imparts a Characterizing Flavor.
14

15 **H. Packaging and Labeling.** No Tobacco Retailer shall Sell any Tobacco Product to any
16 Consumer unless such product: (1) is sold in the original manufacturer's Package
17 intended for Sale to Consumers; and (2) conforms to all applicable federal labeling
18 requirements.

19 **I. Minimum Package Size for Little Cigars.** No Tobacco Retailer shall sell to a Consumer
20 any Little Cigar unless it is sold in a Package of at least twenty Little Cigars.
21

22 **J. False and misleading advertising prohibited.** A Tobacco Retailer who does not have a
23 valid license pursuant to this Chapter or whose license has been suspended or revoked
24 shall not display any item or advertisement relating to Tobacco Products that promotes
25 the Sale or distribution of such products from the premises or that could lead a reasonable
26 Consumer to believe that Tobacco Products can be obtained at that location. Such
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display or advertisement in violation of this provision shall constitute Tobacco Retailing
without a valid license.

Section 3. Effective Date. This ordinance shall become effective and be in full force and effect
from and after thirty (30) days of its passage and adoption.

Section 4. Certification. The City Clerk is directed to certify the passage and adoption of this
Ordinance; cause it to be entered into the City of Hermosa Beach's book of original ordinances;
make a note of the passage and adoption in the records of this meeting; and, within fifteen days after
the passage and adoption of this Ordinance, cause it to be published or posted in accordance with
California law.

PASSED, APPROVED and ADOPTED this 28th day of May, 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney