



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 3, 2019

AGENDA TITLE

Items related to regulating and taxing tobacco products:

1. Continued second reading and consideration of a motion to pass Ordinance 8340 Raising the Age for Purchase of Tobacco Products to 21, requiring age verification, prohibiting the sale of flavored tobacco products and limiting the number of electronic smoking devices and related products that can be sold to an individual in a twenty-four-hour period as amended and setting forth related details; and
2. Continued second reading and consideration of a motion to adopt as an Emergency measure Ordinance 8342 placing on the November 5, 2019 ballot a new sales tax on electronic smoking devices including any refill, cartridge or component; and setting forth the ballot title and other election procedures and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manger
Thomas A. Carr, City Attorney
Kurt Firnhaber, Director of Housing and Human Services
Kristen Hyser, Deputy Director for Housing
Anthony Barkey, Human Services Planner

EXECUTIVE SUMMARY

At the July 16, 2019, council meeting, the city council directed staff to develop ordinances regulating and taxing electronic cigarettes. The purpose for this agenda item

is to pass the ordinances on second reading. Ordinance 8340 would raise the age for purchasing tobacco products to 21, require age verification, limit the number of electronic cigarettes and related products that could be sold to one person in a twenty-four-hour period and ban the sale of flavored tobacco products, except menthol-flavored products, which could be sold until January 1, 2020.

Ordinance 8342 would place on the November 5, 2019 ballot an issue authorizing council to impose a sales tax on electronic smoking devices and related products of up to 40 percent of the sales price. On August 13, 2019, council held a public hearing and directed staff to propose amendments for consideration as part of this agenda item. On August 28, 2019, council deliberated and gave direction for staff to finalize the ordinances as described above.

STAFF RECOMMENDATION

Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

1. Motion to pass on second reading Ordinance 8340 Raising the Age for Purchase of Tobacco Products to 21, requiring age verification, prohibiting the sale of flavored tobacco products and limiting the number of electronic smoking devices and related products that can be sold to an individual in a twenty-four-hour period as amended and setting forth related details; and
2. Motion to adopt on second reading as an Emergency measure Ordinance 8342 placing on the November 5, 2019 ballot a new sales tax on electronic smoking devices including any refill, cartridge or component; and setting forth the ballot title and other election procedures and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Although the sale of nicotine products generates tax revenue, the long-term cost associated with nicotine addiction most likely far outweighs any tax benefit. Some of the proposed changes will adversely affect businesses and could result in closure and loss of jobs.
- Environmental – Vaping devices are intended to be disposable. They are constructed of plastic, contain lithium-ion batteries and electronic circuit boards. In addition, the used product includes residual amounts of various chemicals, including nicotine. Most devices and pods enter the waste stream, although they arguably should be treated as electronic devices and thus hazardous waste. There is no legal way to recycle them in the United States. In Boulder County, e-

cigarette components, including batteries and e-liquids can be disposed of at the Boulder County Hazardous Materials Management Facility.

- Social – The potential social consequences of large-scale youth nicotine addiction will be significant.

OTHER IMPACTS

- Fiscal – If the tax measure passes there should be little or no impact on the city budget. There could be a net positive. Without the ballot issue, enforcement and other regulatory resources will need to be reallocated from other tasks or funded with other revenues.
- Staff time – Staff time is not included in any current work plan.

BACKGROUND

Detailed background was included in the first reading memorandum, the memorandum prepared for the August 13, 2019 public hearing and the August 28, 2019 deliberations meeting. In addition, at the August 13, 2019 public hearing, the council heard a presentation from Boulder County Public Health as well as testimony from the 58 people who spoke during the public hearing.

ANALYSIS

After hearing from concerned community members, industry representatives, experts, health care professionals, counselors, school administrators, teachers and students, council deliberated and directed staff to provide council with ordinances that reflected council's conclusions.

Ordinance 8340, the regulatory ordinance, with proposed amendments indicated with deletions struck out and additions underlined is **Attachment A**. **Attachment B** is Ordinance 8342, which would impose a sales and use tax on electronic smoking devices including any refill, cartridge or component. Because of the extensive changes, the redlined versions of the ordinances may be difficult to read. Accordingly, staff has attached clean versions as **Attachment C** (8340) and **Attachment D** (8342).

The Proposed Amendments

Ordinance 8340

Council directed staff to work from the revised version of Ordinance 8340, which was Attachment E to the August 13, 2019 memorandum. Staff has proposed amendments to that version which would:

1. Limit the flavor ban to electronic smoking devices and related products.
2. Require age verification for all tobacco sales.

3. Limit the number of electronic cigarettes and refills that can be sold to an individual within a 24-hour period.
4. Allow the sale of menthol-flavored electronic cigarette products in stores that limit entry to persons over the age of 21 until January 1, 2019.

Ordinance 8342

Ordinance 8342 would place on the ballot a measure authorizing council to impose a tax on electronic smoking devices. The definition of electronic smoking devices, which is referenced in the ballot title, includes refills, cartridges and components of such devices. The proposed ordinance would ask the voters to authorize council to impose a tax of up to 40 percent of the sales price. Council Members expressed their intent that if the measure passes, the enacting ordinance include a requirement that all retailers display a sign informing purchasers of the tax. Because of the ballot measure deadline, council will need to pass Ordinance 8342 as an emergency measure for it to qualify for the November 5, 2019 ballot. Staff has also included the word “Retail” before the words “Sales Price” in the ballot title to clarify council’s intent that the tax be imposed on the retail sales price. Also, staff recommends increasing the estimated tax revenue from \$2.4 million to \$2.5 million.

NEXT STEPS

If council passes Ordinance 8342 with two-thirds voting in favor, it will be effective immediately and will be placed on the November 5, 2019 ballot. If council passes Ordinance 8340 on second reading, staff will place it on the consent calendar at the September 17, 2019 council meeting. If it passes, the regulatory provisions will be effective October 17, 2019.

ATTACHMENTS

- A – Amended Proposed Ordinance 8340 (Regulatory)
- B – Amended Proposed Emergency Ordinance 8342 (Electronic Smoking Devices Sales Tax)
- C – Proposed Ordinance 8340 (Clean)
- D – Proposed Ordinance 8342 (Clean)

ORDINANCE 8340

AN ORDINANCE ADDING A NEW CHAPTER 6-4.5, “SALE OF TOBACCO PRODUCTS,” TO RAISE THE MINIMUM LEGAL SALES AGE FOR PURCHASE OR SALE OF TOBACCO PRODUCTS TO 21 AND TO BAN THE SALE OF FLAVORED PRODUCTS SOLD FOR USE IN ELECTRONIC SMOKING DEVICES TOBACCO PRODUCTS; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The Federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products.

B. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor Colorado law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products.

C. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

D. The majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.

1 E. Among high school students, during 2017–2018, use of any flavored e-cigarettes
2 increased among current e-cigarette users (from 60.9 percent to 67.8 percent), current use of
3 menthol- or mint-flavored e-cigarettes increased among all current e-cigarette users (from 42.3
4 percent to 51.2 percent) and current exclusive e-cigarette users (from 21.4 percent to 38.1 percent).

5 F. Young people are much more likely than adults to use menthol-, candy-, and fruit-
6 flavored tobacco products.

7 G. Menthol cigarettes have been shown harder to quit and have been heavily marketed
8 to certain communities, including youth, African Americans, LGBT people, and Latinos.

9 H. Seventy percent of middle school and high school students who currently use
10 tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or
11 other sweets. Eighty-one percent of youth say that a flavored tobacco product was their
12 introduction to tobacco.

13 I. The Centers for Disease Control and Prevention reported a more than 800 percent
14 increase in electronic cigarette use among middle school and high school students between 2011
15 and 2015. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who
16 were using e-cigarettes were using them more often, as was previously reported by external icon
17 in November 2018. Frequent use (more than 20 days in the past 30 days) of e-cigarettes increased
18 from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

19 J. Nicotine solutions, which are consumed via electronic smoking devices such as
20 electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy
21 and bubble gum.
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1 K. Between 2004 and 2014 use of non-menthol cigarettes decreased among all
2 populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25)
3 and adults (ages 26+).

4 L. Scientific reviews by the Tobacco Products Scientific Advisory Committee
5 (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of
6 smoking among the entire population, and especially among youth, African Americans and
7 possibly Hispanic and Latino individuals. Among high school students in 2018, use of any tobacco
8 product was reported by 32.4 percent of non-Hispanic white, 21.7 percent of Hispanic, 18.4 percent
9 of non-Hispanic other race and 17.4 percent of non-Hispanic black students.

10 M. Scientific studies on the impact of a national ban on menthol in cigarettes found
11 36.5 percent of menthol cigarette users would try to quit smoking if menthol was banned and
12 between 300,000 and 600,000 lives could be saved by 2050.

13 N. An evaluation of New York City's law, which prohibits the sale of all flavored tobacco,
14 excluding menthol, found that as a result of the law, youth had 37 percent lower odds of ever trying
15 flavored tobacco products and 28 percent lower odds of ever using any type of tobacco.

16 O. According to a 2013-2014 survey, 81 percent of current youth e-cigarette users
17 cited the availability of appealing flavors as the primary reason for use.

18 P. A March 2015 report by the Institute of Medicine concluded that raising the tobacco
19 sale age to 21 will have a substantial positive impact on public health and save lives. The report
20 found that raising the tobacco sale age will significantly reduce the number of adolescents and
21 young adults who start smoking; reduce smoking-caused deaths; and immediately improve the
22 health of adolescents, young adults and young mothers who would be deterred from smoking, as
23 well as their children. Specifically, the report predicts that raising the minimum age for the sale
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1 of tobacco products to 21 will, over time, reduce the smoking rate by about 12 percent and
2 smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths,
3 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost. Stopping the initial
4 use of the product can save lives by helping youth to never become smokers – 80 percent of current
5 smokers started before they were 18 years old and 99 percent of smokers started by age 26.

6 Q. In August of 2014, New York City simultaneously implemented policies to raise
7 the tobacco sale age to 21 and to reduce sources of cheap tobacco. While reductions in smoking
8 cannot be attributed solely to raising the age for sales, preliminary findings suggest that the law is
9 contributing to reductions in youth tobacco use:

- 10 • Data from the Youth Risk Behavior Survey showed that there was a 29 percent decline
11 in current cigarette smoking among high school students between 2013 and 2015. There
12 were also reductions in ever trying cigarettes (-18 percent) and smoking initiation in the
13 past 12 months (-13 percent), over the same time period.

14 R. Vaping is a problem in Colorado in general and particularly in Boulder. A 2018
15 survey of 37 states found that Colorado had the highest level of vaping among high school students.
16 Colorado’s high school student use was double the national average. The Boulder County Healthy
17 Kids Behavior Survey showed the Boulder Valley School District averages 33 percent use among
18 high schoolers. This is above the Colorado average of 26.2 percent and well above the national
19 average of 13.2 percent.

20 S. National data shows that about 95 percent of adult smokers begin smoking before
21 they turn 21, and a substantial number of smokers start even younger – about three-quarters of
22 adult smokers first try smoking before age 18. While less than half (46 percent) of adult smokers
23 become regular, daily smokers before age 18, four out of five become regular, daily smokers before
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1 they turn 21. This means the 18 to 21 age range is a time when many smokers transition to regular
2 use of cigarettes. According to one national survey, the prevalence of current smoking among
3 individuals 18 to 20 years of age is more than double that of those ages of 16 and 17 (18.8 percent
4 vs. 7.5 percent).

5 T. Tobacco companies have admitted in their own internal documents that, if they
6 don't capture new users by their early 20's, it is very unlikely that they ever will. In 1982, one RJ
7 Reynolds researcher stated: "If a man has never smoked by age 18, the odds are three-to-one he
8 never will. By age 24, the odds are twenty-to-one." Raising the sale age of tobacco to 21 is likely
9 to make both direct retail purchase and social source acquisition more difficult for underage youth,
10 especially individuals ages 15 through 17, "who are most likely to get tobacco from social sources,
11 including from students and co-workers above the [minimum legal age of access]." With the
12 minimum legal sale age set at 21 instead of 18, legal purchasers would be less likely to be in the
13 same social networks as high school students and, therefore, less able to sell or give cigarettes to
14 them. A study from Connecticut that looked at acquisition of e-cigarettes concluded that the top
15 source for acquisition of e-cigarette was friends (2014: 50.2 percent, 2015: 45.4 percent).
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17 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
18 COLORADO:

19 Section 1. A new Chapter 6-4.5, "Sale of Tobacco Products," B.R.C. 1981, is added to
20 read as follows:

21 **6-4.5-1. – Definitions.**

22 The following terms used in this chapter have the following meanings unless the context
23 clearly requires otherwise:

24 *Associated Product* means a product intended for use with an Electronic Smoking Device
25 including refills, cartridges and components parts. As used in this Chapter, an associated product
is a single unit.

1 *Characterizing Flavor* means a *Distinguishable* taste or aroma or both, other than the taste
2 or aroma of tobacco, imparted either prior to or during consumption of a *Tobacco Product* or any
3 byproduct produced by the *Tobacco Product*; ~~including~~ *Characterizing Flavors* include, but are
4 not limited to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla,
5 honey, candy, cocoa, dessert, alcoholic beverage, herb, ~~or~~ spice; provided, however, that a *Tobacco*
6 *Product* shall not be determined to have a *Characterizing Flavor* solely because of the use of
7 additives or flavorings or the provision of ingredient information. Rather, it is the presence of a
8 *Distinguishable* taste or aroma or both, as described in the first sentence of this definition that
9 constitutes a characterizing flavor.

10 *Constituent* means any ingredient, substance, chemical or compound other than tobacco,
11 water or a reconstituted tobacco sheet that is added by the manufacturer to a *Tobacco Product*
12 during the processing, manufacturer or packaging of a *Tobacco Product*.

13 *Distinguishable* means perceivable by either the sense of smell or taste.

14 *Electronic Smoking Device* means any product containing or delivering nicotine intended
15 for human consumption that can be used by an individual to simulate smoking in the delivery of
16 nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the
17 product. *Electronic Smoking Device* includes any refill, cartridge or component part of a product,
18 whether or not marketed or sold separately. *Electronic Smoking Device* does not include any
19 product that has been approved or certified by the United States Food and Drug Administration for
20 sale as a tobacco cessation product or for other medically approved or certified purposes.

21 *Flavored Tobacco Product* means any *Tobacco Product* that contains a *Constituent* or that
22 imparts a *Characterizing Flavor*.

23 *Ingredient* means any substance, chemical or compound, other than tobacco, water,
24 reconstituted tobacco sheets that are added by the manufacturer to a *Tobacco Product* during the
25 processing, manufacture or packaging of the *Tobacco Product*.

Labeling means written, printed, or graphic matter upon any *Tobacco Product* or any of its
Packaging, or accompanying such *Tobacco Product*.

Little Cigar means any roll of tobacco other than a cigarette wrapped entirely or in part in
tobacco and weighing no more than three pounds per thousand. *Little Cigar* includes, but is not
limited to, any product known or labeled as “small cigar” “cigarillo” or “little cigar.”

Manufacturer means any person, including any repacker or relabeler, who manufactures,
fabricates, assembles, processes, or labels a *Tobacco Product*; or imports a finished *Tobacco*
Product for sale or distribution into the United States.

Minimum Legal Sales Age means 21 years of age or older.

Packaging means a pack, box, carton, or container of any kind or, if no other container,
any wrapping (including cellophane) in which a *Tobacco Product* is sold or offered for sale to a
consumer.

Tobacco Paraphernalia means any item designed or marketed for the consumption, use,
or preparation of *Tobacco Products*.

1 *Tobacco Product* means:

2 (1) any product ~~which contains, is made, or derived from tobacco or used to deliver~~
3 ~~nicotine, synthetic nicotine or other substances that is intended for human~~
4 ~~consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted,~~
5 ~~sniffed, or ingested by any other means, including, but not limited to cigarettes,~~
6 ~~cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine~~
7 ~~product, mints or hand gels;~~

8 (2) any ~~e~~*Electronic Smoking d*~~Device that delivers nicotine or other substances to the~~
9 ~~person inhaling from the device.;~~

10 (3) *Flavored Tobacco Products;*

11 (4) ~~Notwithstanding any provision of subsections (1), and (2) and (3) above to the~~
12 ~~contrary, Tobacco Product includes any component, part, or accessory or associated~~
13 ~~Tobacco Paraphernalia intended or reasonably expected to be used with of a~~
14 ~~Tobacco Product, whether or not sold separately.~~

15 (5) The term Tobacco Product does not include:

16 (a) any product that contains marijuana; and

17 (ii) any product made from or derived from tobacco and approved by the or products
18 intended for the use in the consumption of marijuana, or (b) drugs, devices, or
19 combination products authorized for sale by the United States Food and Drug
20 Administration (FDA) for use in connection with cessation of smoking, as those
21 terms are defined in the Federal Food, Drug, and Cosmetic Act.

22 *Tobacco Retailer* means any *Person* who sells, offers for sale, or does or offers to exchange
23 for any form of consideration, tobacco, *Tobacco Products* or *Tobacco Paraphernalia*.

24 *Tobacco Retailing* shall mean the doing of any of these things. This definition is without
25 regard to the quantity of *Tobacco Products* or *Tobacco Paraphernalia* sold, offered for sale,
exchanged, or offered for exchange.

6-4.5-2. - Prohibited Acts.

(a) No person shall sell, give or otherwise transfer any Tobacco Product to any person who is
under the *Minimum Legal Sales a*Age of 21.

(a)(b) No Tobacco Retailer shall sell any Tobacco Product to any person without first (1)
requiring the person to produce government-issued identification including a photograph
and a date of birth, or (2) for online sales verifying the purchaser's age and identity, by
comparing information entered by the any purchaser against at least two databases that do
not include self-reported, social media or marketing data.

(c) No Tobacco Retailer or any agent or employee of any Tobacco Retailer shall sell, offer for
sale or possess with the intent to sell or offer for sale any Flavored Tobacco Product

1 designed for or capable of use in any Electronic Smoking Device, provided, however, that
2 until January 1, 2020, a Tobacco Retailer who does not permit anyone under the age of 21
3 from being present in or entering the premises may sell or offer for sale menthol-flavored
4 Flavored Tobacco Products designed for or capable of being used in an Electronic Smoking
5 Device.

6 ~~(b)~~(d) No Tobacco Retailer shall sell more than two electronic cigarettes or four Associated
7 Products including refills to any one person in any 24-hour period.

8 ~~(e)~~(e) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or
9 more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco
10 Products, packages of Flavored Tobacco Products, or any combination thereof, possesses
11 such Flavored Tobacco Products with intent to sell or offer for sale.

12 ~~(d)~~(f) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco
13 Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco
14 Retailer or Manufacturer has:

15 (1) Made a public statement or claim that the Tobacco Product imparts a Characterizing
16 Flavor;

17 (2) Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly
18 or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or

19 (3) Taken action directed to consumers that would be reasonably expected to cause
20 consumers to believe the Tobacco Product imparts a Characterizing Flavor.

21 **6-4.5-3. - Civil Penalty.**

22 Civil penalties for violations of this chapter may be imposed by the city against any
23 person in an amount up to \$5,000 per occurrence. If a business entity receives revenue as the
24 result of any act prohibited by this title, there shall be a presumption that any penalty shall be
25 imposed on the business entity and not personally against any employee of the business entity.
Any person subjected to civil penalties shall be entitled to a hearing pursuant to Chapter 1-3,
"Quasi-Judicial Hearings," B.R.C. 1981, to contest such penalties. All such hearings shall be
conducted by the Boulder Municipal Court as the hearing officer under a de novo standard of
review.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title
only and orders that copies of this ordinance be made available in the office of the city clerk for
public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 6th day of August 2019.

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4 _____
5 Suzanne Jones,
6 Mayor

7 Attest:

8 _____
9 Lynnette Beck,
10 City Clerk

11 READ ON SECOND READING, PASSED this 3rd day of September 2019.

12 _____
13 Suzanne Jones,
14 Mayor

15 Attest:

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17 Lynnette Beck,
18 City Clerk

19 READ ON THIRD READING, ADOPTED this 17th day of September 2019.

20 _____
21 Suzanne Jones,
22 Mayor

23 Attest:

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25 Lynnette Beck,
City Clerk

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ORDINANCE 8342

(Tax on Vaping Products~~Tobacco Products Not including Cigarettes~~)

AN EMERGENCY ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF UP TO 40 PERCENT OF THE RETAIL SALES PRICE ON ALL ELECTRONIC SMOKING DEVICES~~TOBACCO PRODUCTS SOLD, NOT INCLUDING CIGARETTES~~ WITH A PORTION OF THE REVENUE BEING DEDICATED TO LICENSING OF NICOTINE PRODUCT RETAILERS, NICOTINE EDUCATION, NICOTINE USE CESSATION PROGRAMS AND NICOTINE PRODUCT ENFORCEMENT; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of a sales and use tax increase as described in the ballot issue title in this ordinance.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

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BALLOT ISSUE _____

**TAX ON THE SALE OF TOBACCO PRODUCTS NOT
INCLUDING CIGARETTES VAPING PRODUCTS**

SHALL CITY OF BOULDER TAXES BE INCREASED TWO MILLION ~~FIVE~~FOUR HUNDERD THOUSAND DOLLARS (FIRST FULL FISCAL YEAR INCREASE) ANNUALLY BY IMPOSING A SALES AND USE TAX OF UP TO 40 PERCENT OF THE RETAIL SALES PRICE OF ALL ELECTRONIC SMOKING DEVICES, INCLUDING ANY REFILL, CARTRIDGE OR COMPONENT OF SUCH A PRODUCT~~TOBACCO PRODUCTS SOLD NOT INCLUDING CIGARETTES~~; THE TERM “CIGARETTE ELECTRONIC SMOKING DEVICE” SHALL HAVE THE MEANING AS IN ~~SECTION 39-28-202 OF THE COLORADO REVISED STATUTES AND “TOBACCO PRODUCTS” SHALL HAVE THE MEANING AS IN SECTION 6-4.5-1 OF THE BOULDER REVISED CODE; ALL EFFECTIVE JULY 1, 2020?~~

AND IN CONNECTION THEREWITH,

SHALL ALL OF THE REVENUES COLLECTED BE USED TO FUND:

- THE ADMINISTRATIVE COST OF THE TAX, AND THEREAFTER FOR;
- IMPLEMENTATION AND ADMINISTRATION OF A LICENSING PROGRAM FOR ALL NICOTINE PRODUCT RETAILERS;
- HEALTH PROMOTION;
- EDUCATION PROGRAMS REGARDING NICOTINE PRODUCT USE INCLUDING ENFORCEMENT;

WITH ANY REMAINING FUNDS BEING AVAILABLE FOR GENERAL GOVERNMENT SERVICES, INCLUDING LIBRARY, POLICE, FIRE, PARKS, TRANSPORTATION AND GENERAL GOVERNMENT ADMINISTRATION?

ALL EFFECTIVE JANUARY 1, 2020, AND IN CONNECTION THEREWITH.

1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH
2 RATES AND ANY EARNINGS THEREON BE COLLECTED,
3 RETAINED, AND SPENT, AS A VOTER-APPROVED
4 REVENUE CHANGE WITHOUT LIMITATION OR
5 CONDITION, AND WITHOUT LIMITING THE COLLECTION,
6 RETENTION, OR SPENDING OF ANY OTHER REVENUES OR
7 FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X
8 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY
9 OTHER LAW?

10 YES/FOR ____

11 NO/AGAINST ____

12 Section 4. If this ballot issue is approved by the voters, ~~the Charter shall be so amended~~
13 ~~and~~ the City Council may adopt amendments to the Boulder Revised Code to implement this
14 sales and use tax, establish a system of regulation and licensing of sellers of tobacco and nicotine
15 products, and such other amendments to the Boulder Revised Code as may be necessary to
16 implement the intent and purpose of this ordinance.

17 Section 5. The election shall be conducted under the provisions of the Colorado
18 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this
19 ordinance.

20 Section 6. The officers of the city are authorized to take all action necessary or
21 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to
22 conduct the election for the city.

23 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any
24 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
25 provisions of this ordinance.

26 Section 8. If a majority of all the votes cast at the election on the issue submitted shall be
27 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.
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READ OF SECOND READING, ADOPTED AS AN EMERGENCY MEASURE BY
TWO-THIRDS COUNCIL MEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE
ONLY this 3rd day of September 2019.

Suzanne Jones,
Mayor

Attest:

Lynnette Beck,
City Clerk

ORDINANCE 8340

AN ORDINANCE ADDING A NEW CHAPTER 6-4.5, "SALE OF TOBACCO PRODUCTS," TO RAISE THE MINIMUM LEGAL SALES AGE FOR PURCHASE OR SALE OF TOBACCO PRODUCTS TO 21 AND TO BAN THE SALE OF FLAVORED PRODUCTS SOLD FOR USE IN ELECTRONIC SMOKING DEVICES PRODUCTS; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The Federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products.

B. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor Colorado law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products.

C. Mentholated and flavored products have been shown to be "starter" products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

D. The majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.

1 E. Among high school students, during 2017–2018, use of any flavored e-cigarettes
2 increased among current e-cigarette users (from 60.9 percent to 67.8 percent), current use of
3 menthol- or mint-flavored e-cigarettes increased among all current e-cigarette users (from 42.3
4 percent to 51.2 percent) and current exclusive e-cigarette users (from 21.4 percent to 38.1 percent).

5 F. Young people are much more likely than adults to use menthol-, candy-, and fruit-
6 flavored tobacco products.

7 G. Menthol cigarettes have been shown harder to quit and have been heavily marketed
8 to certain communities, including youth, African Americans, LGBT people, and Latinos.

9 H. Seventy percent of middle school and high school students who currently use
10 tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or
11 other sweets. Eighty-one percent of youth say that a flavored tobacco product was their
12 introduction to tobacco.

13 I. The Centers for Disease Control and Prevention reported a more than 800 percent
14 increase in electronic cigarette use among middle school and high school students between 2011
15 and 2015. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who
16 were using e-cigarettes were using them more often, as was previously reported by external icon
17 in November 2018. Frequent use (more than 20 days in the past 30 days) of e-cigarettes increased
18 from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

19 J. Nicotine solutions, which are consumed via electronic smoking devices such as
20 electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy
21 and bubble gum.
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1 K. Between 2004 and 2014 use of non-menthol cigarettes decreased among all
2 populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25)
3 and adults (ages 26+).

4 L. Scientific reviews by the Tobacco Products Scientific Advisory Committee
5 (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of
6 smoking among the entire population, and especially among youth, African Americans and
7 possibly Hispanic and Latino individuals. Among high school students in 2018, use of any tobacco
8 product was reported by 32.4 percent of non-Hispanic white, 21.7 percent of Hispanic, 18.4 percent
9 of non-Hispanic other race and 17.4 percent of non-Hispanic black students.

10 M. Scientific studies on the impact of a national ban on menthol in cigarettes found
11 36.5 percent of menthol cigarette users would try to quit smoking if menthol was banned and
12 between 300,000 and 600,000 lives could be saved by 2050.

13 N. An evaluation of New York City's law, which prohibits the sale of all flavored tobacco,
14 excluding menthol, found that as a result of the law, youth had 37 percent lower odds of ever trying
15 flavored tobacco products and 28 percent lower odds of ever using any type of tobacco.

16 O. According to a 2013-2014 survey, 81 percent of current youth e-cigarette users
17 cited the availability of appealing flavors as the primary reason for use.

18 P. A March 2015 report by the Institute of Medicine concluded that raising the tobacco
19 sale age to 21 will have a substantial positive impact on public health and save lives. The report
20 found that raising the tobacco sale age will significantly reduce the number of adolescents and
21 young adults who start smoking; reduce smoking-caused deaths; and immediately improve the
22 health of adolescents, young adults and young mothers who would be deterred from smoking, as
23 well as their children. Specifically, the report predicts that raising the minimum age for the sale
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25

1 of tobacco products to 21 will, over time, reduce the smoking rate by about 12 percent and
2 smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths,
3 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost. Stopping the initial
4 use of the product can save lives by helping youth to never become smokers – 80 percent of current
5 smokers started before they were 18 years old and 99 percent of smokers started by age 26.

6 Q. In August of 2014, New York City simultaneously implemented policies to raise
7 the tobacco sale age to 21 and to reduce sources of cheap tobacco. While reductions in smoking
8 cannot be attributed solely to raising the age for sales, preliminary findings suggest that the law is
9 contributing to reductions in youth tobacco use:

- 10 • Data from the Youth Risk Behavior Survey showed that there was a 29 percent decline
11 in current cigarette smoking among high school students between 2013 and 2015. There
12 were also reductions in ever trying cigarettes (-18 percent) and smoking initiation in the
13 past 12 months (-13 percent), over the same time period.

14 R. Vaping is a problem in Colorado in general and particularly in Boulder. A 2018
15 survey of 37 states found that Colorado had the highest level of vaping among high school students.
16 Colorado’s high school student use was double the national average. The Boulder County Healthy
17 Kids Behavior Survey showed the Boulder Valley School District averages 33 percent use among
18 high schoolers. This is above the Colorado average of 26.2 percent and well above the national
19 average of 13.2 percent.

20 S. National data shows that about 95 percent of adult smokers begin smoking before
21 they turn 21, and a substantial number of smokers start even younger – about three-quarters of
22 adult smokers first try smoking before age 18. While less than half (46 percent) of adult smokers
23 become regular, daily smokers before age 18, four out of five become regular, daily smokers before
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1 they turn 21. This means the 18 to 21 age range is a time when many smokers transition to regular
2 use of cigarettes. According to one national survey, the prevalence of current smoking among
3 individuals 18 to 20 years of age is more than double that of those ages of 16 and 17 (18.8 percent
4 vs. 7.5 percent).

5 T. Tobacco companies have admitted in their own internal documents that, if they
6 don't capture new users by their early 20's, it is very unlikely that they ever will. In 1982, one RJ
7 Reynolds researcher stated: "If a man has never smoked by age 18, the odds are three-to-one he
8 never will. By age 24, the odds are twenty-to-one." Raising the sale age of tobacco to 21 is likely
9 to make both direct retail purchase and social source acquisition more difficult for underage youth,
10 especially individuals ages 15 through 17, "who are most likely to get tobacco from social sources,
11 including from students and co-workers above the [minimum legal age of access]." With the
12 minimum legal sale age set at 21 instead of 18, legal purchasers would be less likely to be in the
13 same social networks as high school students and, therefore, less able to sell or give cigarettes to
14 them. A study from Connecticut that looked at acquisition of e-cigarettes concluded that the top
15 source for acquisition of e-cigarette was friends (2014: 50.2 percent, 2015: 45.4 percent).
16

17 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
18 COLORADO:

19 Section 1. A new Chapter 6-4.5, "Sale of Tobacco Products," B.R.C. 1981, is added to
20 read as follows:

21 **6-4.5-1. – Definitions.**

22 The following terms used in this chapter have the following meanings unless the context
23 clearly requires otherwise:

24 *Associated Product* means a product intended for use with an Electronic Smoking Device
25 including refills, cartridges and components parts. As used in this Chapter, an associated product
is a single unit.

1 *Characterizing Flavor* means a *Distinguishable* taste or aroma or both other than the taste
2 or aroma of tobacco, imparted either prior to or during consumption of a *Tobacco Product* or any
3 byproduct produced by the *Tobacco Product*. *Characterizing Flavors* include, but are not limited
4 to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla, honey,
5 candy, cocoa, dessert, alcoholic beverage, herb, spice; provided however, that a *Tobacco Product*
6 shall not be determined to have a *Characterizing Flavor* solely because of the use of additives or
7 flavorings or the provision of ingredient information. Rather, it is the presence of a
8 *Distinguishable* taste or aroma or both, as described in the first sentence of this definition that
9 constitutes a characterizing flavor.

10 *Constituent* means any ingredient, substance, chemical or compound other than tobacco,
11 water or a reconstituted tobacco sheet that is added by the manufacturer to a *Tobacco Product*
12 during the processing, manufacturer or packaging of a *Tobacco Product*.

13 *Distinguishable* means perceivable by either the sense of smell or taste.

14 *Electronic Smoking Device* means any product containing or delivering nicotine intended
15 for human consumption that can be used by an individual to simulate smoking in the delivery of
16 nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the
17 product. *Electronic Smoking Device* includes any refill, cartridge or component part of a product,
18 whether or not marketed or sold separately. *Electronic Smoking Device* does not include any
19 product that has been approved or certified by the United States Food and Drug Administration for
20 sale as a tobacco cessation product or for other medically approved or certified purposes.

21 *Flavored Tobacco Product* means any *Tobacco Product* that contains a *Constituent* or that
22 imparts a *Characterizing Flavor*.

23 *Ingredient* means any substance, chemical or compound, other than tobacco, water,
24 reconstituted tobacco sheets that are added by the manufacturer to a *Tobacco Product* during the
25 processing, manufacture or packaging of the *Tobacco Product*.

Labeling means written, printed, or graphic matter upon any *Tobacco Product* or any of its
Packaging, or accompanying such *Tobacco Product*.

Little Cigar means any roll of tobacco other than a cigarette wrapped entirely or in part in
tobacco and weighing no more than three pounds per thousand. *Little Cigar* includes, but is not
limited to, any product known or labeled as “small cigar” “cigarillo” or “little cigar.”

Manufacturer means any person, including any repacker or relabeler, who manufactures,
fabricates, assembles, processes, or labels a *Tobacco Product*; or imports a finished *Tobacco*
Product for sale or distribution into the United States.

Minimum Legal Sales Age means 21 years of age or older.

Packaging means a pack, box, carton, or container of any kind or, if no other container,
any wrapping (including cellophane) in which a *Tobacco Product* is sold or offered for sale to a
consumer.

Tobacco Paraphernalia means any item designed or marketed for the consumption, use,
or preparation of *Tobacco Products*.

1 *Tobacco Product* means:

2 (1) any product which contains, is made or derived from tobacco or used to deliver
3 nicotine, synthetic nicotine or other substances intended for human consumption,
4 whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by
 any other means, including, but not limited to cigarettes, cigars, little cigars, chewing
 tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints or hand gels;

5 (2) an *Electronic Smoking Device*;

6 (3) *Flavored Tobacco Products*;

7 (4) notwithstanding any provision of subsections (1), (2) and (3) above to the contrary,
8 *Tobacco Product* includes any component, part, or accessory or associated *Tobacco*
 Paraphernalia of a *Tobacco Product* whether or not sold separately.

9 (5) The term *Tobacco Product* does not include:

10 (i) any product that contains marijuana; and

11 (ii) any product made from or derived from tobacco and approved by the Food and
 Drug Administration (FDA) for use in connection with cessation of smoking.

12 *Tobacco Retailer* means any *Person* who sells, offers for sale, or does or offers to exchange
13 for any form of consideration, tobacco, *Tobacco Products* or *Tobacco Paraphernalia*.

14 *Tobacco Retailing* shall mean the doing of any of these things. This definition is without
15 regard to the quantity of *Tobacco Products* or *Tobacco Paraphernalia* sold, offered for sale,
16 exchanged, or offered for exchange.

16 **6-4.5-2. - Prohibited Acts.**

17 (a) No person shall sell, give or otherwise transfer any Tobacco Product to any person who is
18 under the Minimum Legal Sales Age.

19 (b) No Tobacco Retailer shall sell any Tobacco Product to any person without first (1)
20 requiring the person to produce government-issued identification including a photograph
21 and a date of birth, or (2) for online sales verifying the purchaser's age and identity, by
22 comparing information entered by the any purchaser against at least two databases that do
23 not include self-reported, social media or marketing data.

24 (c) No Tobacco Retailer or any agent or employee of any Tobacco Retailer shall sell, offer for
25 sale or possess with the intent to sell or offer for sale any Flavored Tobacco Product
designed for or capable of use in any Electronic Smoking Device, provided, however, that
until January 1, 2020, a Tobacco Retailer who does not permit anyone under the age of 21
from being present in or entering the premises may sell or offer for sale menthol-flavored
Flavored Tobacco Products designed for or capable of being used in an Electronic Smoking
Device.

- 1 (d) No Tobacco Retailer shall sell more than two electronic cigarettes or four Associated
2 Products including refills to any one person in any 24-hour period.
- 3 (e) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or
4 more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco
5 Products, packages of Flavored Tobacco Products, or any combination thereof, possesses
6 such Flavored Tobacco Products with intent to sell or offer for sale.
- 7 (f) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco
8 Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco
9 Retailer or Manufacturer has:
- 10 (1) Made a public statement or claim that the Tobacco Product imparts a Characterizing
11 Flavor;
- 12 (2) Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly
13 or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- 14 (3) Taken action directed to consumers that would be reasonably expected to cause
15 consumers to believe the Tobacco Product imparts a Characterizing Flavor.

16 **6-4.5-3. - Civil Penalty.**

17 Civil penalties for violations of this chapter may be imposed by the city against any
18 person in an amount up to \$5,000 per occurrence. If a business entity receives revenue as the
19 result of any act prohibited by this title, there shall be a presumption that any penalty shall be
20 imposed on the business entity and not personally against any employee of the business entity.
21 Any person subjected to civil penalties shall be entitled to a hearing pursuant to Chapter 1-3,
22 "Quasi-Judicial Hearings," B.R.C. 1981, to contest such penalties. All such hearings shall be
23 conducted by the Boulder Municipal Court as the hearing officer under a de novo standard of
24 review.

25 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title
only and orders that copies of this ordinance be made available in the office of the city clerk for
public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 6th day of August 2019.

3
4 _____
5 Suzanne Jones,
6 Mayor

7 Attest:

8 _____
9 Lynnette Beck,
10 City Clerk

11 READ ON SECOND READING, PASSED this 3rd day of September 2019.

12 _____
13 Suzanne Jones,
14 Mayor

15 Attest:

16 _____
17 Lynnette Beck,
18 City Clerk

19 READ ON THIRD READING, ADOPTED this 17th day of September 2019.

20 _____
21 Suzanne Jones,
22 Mayor

23 Attest:

24 _____
25 Lynnette Beck,
City Clerk

ORDINANCE 8342

(Tax on Vaping Products)

AN EMERGENCY ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF UP TO 40 PERCENT OF THE RETAIL SALES PRICE ON ALL ELECTRONIC SMOKING DEVICES SOLD, WITH A PORTION OF THE REVENUE BEING DEDICATED TO LICENSING OF NICOTINE PRODUCT RETAILERS, NICOTINE EDUCATION, NICOTINE USE CESSATION PROGRAMS AND NICOTINE PRODUCT ENFORCEMENT; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of a sales and use tax increase as described in the ballot issue title in this ordinance.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

BALLOT ISSUE _____

TAX ON VAPING PRODUCTS

SHALL CITY OF BOULDER TAXES BE INCREASED TWO MILLION FIVE HUNDERD THOUSAND DOLLARS (FIRST FULL FISCAL YEAR INCREASE) ANNUALLY BY IMPOSING A SALES AND USE TAX OF UP TO 40 PERCENT OF THE RETAIL SALES PRICE OF ALL ELECTRONIC SMOKING DEVICES, INCLUDING ANY REFILL, CARTRIDGE OR COMPONENT OF SUCH A PRODUCT; THE TERM "ELECTRONIC SMOKING DEVICE" SHALL HAVE THE MEANING AS IN SECTION 6-4.5-1 OF THE BOULDER REVISED CODE;

AND IN CONNECTION THEREWITH,

SHALL ALL OF THE REVENUES COLLECTED BE USED TO FUND:

- THE ADMINISTRATIVE COST OF THE TAX, AND THEREAFTER FOR:
- IMPLEMENTATION AND ADMINISTRATION OF A LICENSING PROGRAM FOR ALL NICOTINE PRODUCT RETAILERS;
- HEALTH PROMOTION;
- EDUCATION PROGRAMS REGARDING NICOTINE PRODUCT USE INCLUDING ENFORCEMENT;

WITH ANY REMAINING FUNDS BEING AVAILABLE FOR GENERAL GOVERNMENT SERVICES, INCLUDING LIBRARY, POLICE, FIRE, PARKS, TRANSPORTATION AND GENERAL GOVERNMENT ADMINISTRATION?

ALL EFFECTIVE JANUARY 1, 2020, AND IN CONNECTION THEREWITH,

1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH
2 RATES AND ANY EARNINGS THEREON BE COLLECTED,
3 RETAINED, AND SPENT, AS A VOTER-APPROVED
4 REVENUE CHANGE WITHOUT LIMITATION OR
5 CONDITION, AND WITHOUT LIMITING THE COLLECTION,
6 RETENTION, OR SPENDING OF ANY OTHER REVENUES OR
7 FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X
8 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY
9 OTHER LAW?

10 YES/FOR ____

11 NO/AGAINST ____

12 Section 4. If this ballot issue is approved by the voters, the City Council may adopt
13 amendments to the Boulder Revised Code to implement this sales and use tax, establish a system
14 of regulation and licensing of sellers of tobacco and nicotine products, and such other
15 amendments to the Boulder Revised Code as may be necessary to implement the intent and
16 purpose of this ordinance.

17 Section 5. The election shall be conducted under the provisions of the Colorado
18 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this
19 ordinance.

20 Section 6. The officers of the city are authorized to take all action necessary or
21 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to
22 conduct the election for the city.

23 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any
24 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
25 provisions of this ordinance.

26 Section 8. If a majority of all the votes cast at the election on the issue submitted shall be
27 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.
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READ OF SECOND READING, ADOPTED AS AN EMERGENCY MEASURE BY
TWO-THIRDS COUNCIL MEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE
ONLY this 3rd day of September 2019.

Suzanne Jones,
Mayor

Attest:

Lynnette Beck,
City Clerk