

March 2, 2020

FREQUENTLY ASKED QUESTIONS

On January 14, 2020, the Alameda County Board of Supervisors passed a new law that requires all tobacco retailers in Unincorporated areas of Alameda County to obtain and maintain a valid tobacco retailer license **by April 13, 2020** in order to sell tobacco. Here are answers to questions you may have:

What are the new restrictions associated with this tobacco sales law?

- **The sale of all flavored tobacco products, including menthol cigarettes, is prohibited.** Flavored tobacco products include, but are not limited to, flavored: cigarettes, cigars, little cigars/cigarillos, blunt wraps, chewing tobacco, pipe tobacco, snuff, hookah, e-cigarettes, e-juice, JUUL and other vaporizers, and all other flavored electronic smoking devices.
- **The sale of a package of cigarettes for less than eight dollars (\$8.00) is prohibited.** Retailers may not sell a package of cigarettes for less than 8 dollars, including all applicable taxes.
- **The sale of little cigars/cigarillos and single large cigars for less than eight dollars (\$8.00) per package is prohibited.** Retailers may not sell packs of little cigars/cigarillos or single large cigars for less than 8 dollars, including all applicable taxes.
- **The sale of little cigars/cigarillos is prohibited in pack sizes less than twenty (20).** Retailers may not sell little cigars/cigarillos in packages of less than 20. For large cigars only: retailers may sell single large cigars for at least 8 dollars each.
- **The redemption of tobacco product discounts and coupons is prohibited.** Retailers may not sell any tobacco products for less than the full retail price.
- **The sale of tobacco products is prohibited in pharmacies.** No tobacco products can be sold in pharmacies, including tobacco products that are not flavored.
- **The sale of tobacco products by new tobacco retailers is prohibited within 1,000 feet of youth-populated areas and within 500 feet of existing tobacco retailers.** This distance requirement does not apply to retailers that had a State tobacco retail license at the time the ordinance passed on 1/14/20.
- **Tobacco Retailer Licenses will be limited to one for each 2,500 residents.** This limit does not apply to retailers that had a State tobacco retail license at the time the ordinance passed on 1/14/20.

Why was this regulation passed?

This regulation was passed: 1) to ensure that retailers comply with tobacco control laws to protect the health, safety and welfare of residents who live in Unincorporated areas of Alameda County, and 2) to limit youth access to tobacco products. As a result of targeted industry marketing strategies, flavored tobacco products are marketed to youth and young adults, helping to establish tobacco habits that can lead to long-term addiction. Reducing youth exposure to these products will counteract this targeting.

I have a State tobacco retailer license, do I need to obtain a County tobacco retailer license?

Yes. This law requires that all tobacco retailers who wish to engage in the sale of tobacco products in Unincorporated areas of Alameda County obtain and maintain a valid County tobacco retailer license. For more information, please refer to Chapter 3.58 in Title 3 of the Alameda County Ordinance Code.

How do I obtain a County tobacco retailer license?

The County is currently in the process of developing a Tobacco Retailer License application and will send a letter that includes the application once it is finalized.

Is there a Tobacco Retailer License (TRL) application fee and, if so, how much is it?

Yes, a TRL fee will be required to obtain and maintain the license annually. Retailer fees cover the cost to implement and enforce the TRL Program. The County is currently determining the cost of this fee.

What is a “flavored tobacco product?”

Any tobacco product that imparts a characterizing flavor.

What is a “characterizing flavor?”

A “Characterizing flavor” is a taste or aroma, other than the taste or aroma of tobacco. Examples of characterizing flavors include:

- Menthol, mint or wintergreen
- Fruit flavors such as grape, cherry, mango and watermelon
- Candy flavors such as chocolate, vanilla, cotton candy, bubble gum, and licorice
- Alcohol flavors such as wine, apple martini, piña colada, rum, and cognac
- Spice flavors such as clove and cinnamon

There are many other flavors not listed here such as honey, cream, coffee, cocoa, herbs, and desserts.

How is “tobacco product” defined in this ordinance?

- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars/cigarillos, chewing tobacco, pipe tobacco, snuff, blunt wraps; and
- Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- “Tobacco product” includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.
- “Tobacco product” does not include drugs (i.e. FDA-approved tobacco cessation products), devices, or combination products authorized for sale by the United States Food and Drug Administration (FDA), as those terms are defined in the Federal Food, Drug and Cosmetic Act.

What if I am not sure if a tobacco product is flavored?

Most tobacco products are described on the Internet. For example, a brand of “tropical fusion” cigarillos is described as “enhanced with delicious tropical flavors.” Please refer to the enclosed Notice to help you determine whether a tobacco product is restricted. If you are still unsure, please refer to the contact information below.

When does this law go into effect?

Tobacco retailers will be required to obtain a County Tobacco Retailer License by April 13, 2020. Retailers must fully comply with all ordinance provisions by this time. Enforcement of the sale of flavored tobacco products and other tobacco product sales restrictions will begin on July 12, 2020.

What should I do with prohibited tobacco products that I have on hand as of April 13, 2020?

The ordinance requires that tobacco retailers stop selling prohibited products as of April 13, 2020. Tobacco retailers should discuss with their distributors what to do with unsold product as of that date. The law provides retailers 90 days from the date of ordinance adoption to come into compliance.

If my existing tobacco retail establishment is within 1,000 feet of youth-populated areas or 500 feet of existing tobacco retailers, may I continue to sell tobacco products as of April 13, 2020?

Yes, assuming you obtain a County Tobacco Retailer License. These density cap requirements do not apply to retailers who had a State tobacco retail license as of the date of ordinance adoption on January 14, 2020. Note: “Youth-populated areas” include schools for pre-K to 12th grade students, licensed child or day care facilities, public parks or playgrounds, or public recreation centers.

If I sell my tobacco retail business, may the purchaser continue to sell tobacco products?

The ordinance limits the total number of tobacco retailer licenses to 1 per 2,500 residents; currently the number of existing tobacco retailers exceeds this limit. Until the number of retailers in Unincorporated areas of Alameda County is less than this density cap, the new purchaser of a tobacco retailer business would not be eligible to obtain a County Tobacco Retailer License and therefore could not sell tobacco products.

Can I continue to sell Electronic Smoking Devices?

Under this law, the sale of *flavored* electronic smoking devices are prohibited. However, on February 25, 2020, Alameda County Board of Supervisors voted to approve a first reading of an additional proposed ordinance that would prohibit the sale of all electronic smoking devices. Should that ordinance be adopted, the County will notify retailers about this additional regulation.

What are the penalties if I violate this law?

Under this law, first violation within any five (5) year period will be subject to a thirty (30) day licence suspension and a possible fine of \$250; second violation within any five (5) year period will be subject to a ninety (90) day license suspension and a possible fine of \$500; third violation within any five (5) year period will be subject to a one year license suspension and a possible fine of \$1,000; and four or more violations will be subject to license revocation.

Who can I contact for more information?

For more information, please contact Austin Wingate at Alameda County Tobacco Control Program: austin.wingate@acgov.org or 510-208-5905.

