



County of San Diego

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PUBLIC HEALTH OFFICER

February 28, 2020

Dear Tobacco Retailer:

In 2019, the National Youth Tobacco Survey, released by the Centers for Disease Control and Prevention (CDC) and the United States Food and Drug Administration (FDA), showed that more than 5 million United States middle and high school students reported current e-cigarette use, an increase of more than 1.5 million students from the 2018 findings. This same survey found that, among current exclusive e-cigarette users, approximately 72% of high school students and 60% of middle school students used flavored e-cigarettes. In addition, youth use of e-cigarettes is associated with a greater likelihood of smoking combustible cigarettes and youth report product flavoring as being one of the top reasons for using e-cigarettes.

On January 28, 2020, the County of San Diego Board of Supervisors approved an ordinance: 1) prohibiting the sale or distribution of flavored smoking products and 2) imposing a temporary ban on the sale or distribution of electronic smoking devices. This letter is to provide information about San Diego County Ordinance No. 10647, which places restrictions on the sale of certain tobacco products. These restrictions apply to the unincorporated area of San Diego County. The restrictions will be operative on July 1, 2020. Below is a summary of Ordinance language and additional information on differences between the local restrictions and the new FDA enforcement policy.

The following restrictions will be in place on July 1, 2020:

1. The sale or distribution of flavored smoking products is prohibited.

- a. "Distribution" means to give smoking products to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smoking products to the general public at no cost or at nominal cost.
- b. "Flavored Smoking Product" is a product containing, made, or derived from tobacco or nicotine that is intended for smoking, and that emits a taste or smell, other than the taste or smell of tobacco, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic beverage, herb, or spice.
- c. "Shisha", which is a flavored smoking product that is traditionally mixed with molasses, honey, fruit pulp, or dried fruits and is sold for use in a water pipe known as a hookah, is exempted from these restrictions.

2. The sale or distribution of electronic smoking devices is prohibited until February 28, 2021 or an earlier date dependent on the results of the CDC's ongoing vaping illness investigation.

- a. E-hookah devices are not exempted from the temporary device ban.

February 28, 2020

Page 2 of 2

These local restrictions are different from the FDA enforcement policy regarding flavored e-cigarette products. The new FDA policy regarding flavored e-cigarette products includes flavored cartridge-based e-cigarettes but does not include tobacco- or menthol-flavored e-cigarette products, or other e-cigarette devices that are not cartridge-based (such as tank-based devices that use liquid flavoring). The FDA policy is not characterized as a ban of these products since it already considers most e-cigarette products to be out of compliance with FDA requirements. Instead, the policy just sets forth enforcement priorities which are subject to change at any time.

The County's restrictions go beyond the FDA's policy and includes bans of all flavored smoking products and all electronic smoking devices, regardless of type. The Ordinance addresses local sales of flavored smoking products, not the commercial manufacture of such products.

On April 21, 2020, County of San Diego Board of Supervisors will consider actions to:

- Include smokeless tobacco in the prohibition on flavored tobacco products.
- Further review the hookah exemption.
- Establish a tobacco retail licensing program to strengthen enforcement of minimum age sale laws and to facilitate compliance monitoring of retailers.
- Revise applicable sections of County Administrative Code related to tobacco control regulation to align with State law and resolve any inconsistencies and duplications.
- Report back on a targeted vaping public health awareness campaign within the existing Tobacco Control Resource Program, and in coordination with the California Department of Public Health.

After further review, County of San Diego Board of Supervisors may make changes that could impact the existing exemptions. Should changes be made on April 21, additional information will be sent to the impacted retailers.

In the coming months, Public Health Services will create a website where implementation resources will be posted. These resources will include the Ordinance and Frequently Asked Questions. We anticipate the site will be online in late spring 2020.

If you have any questions about the regulations or specific products that may or may not be sold, please contact the County of San Diego's Tobacco Control Resource Program at tobacco@sdcounty.ca.gov or visit: https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/tobacco_control_resource_program.html.

Sincerely,


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Public Health Officer

County of San Diego Health and Human Services Agency