

County of San Diego Tobacco Ordinance No. 10647

Device and Flavor Ban Frequently Asked Questions

Background

On January 28, 2020, County of San Diego Board of Supervisors approved an ordinance: 1) banning the sale or distribution of flavored smoking products and 2) imposing a temporary ban on the sale or distribution of electronic smoking devices in the unincorporated area of the county. On April 21, 2020, County staff will return to the Board with recommendations for a Tobacco Retail Licensing Program as well as additional review and recommendations for hookah and the addition of smokeless tobacco in the flavored tobacco products ban.

Questions

1. What are the new restrictions outlined in the Ordinance?

The Ordinance will cover the following in the unincorporated area of San Diego County:

- The sale or distribution of all flavored smoking tobacco products is prohibited.
- The sale or distribution of an electronic smoking device is prohibited until February 28, 2021, or an earlier date depending on the results of the Centers for Disease Control and Prevention (CDC)'s ongoing vaping illness investigation.

2. What does “distribution” mean?

“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.

3. What is a “flavored smoking product”?

“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.

4. Is hookah exempted?

“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. E-hookah devices are not exempted from the temporary device ban. However, County of San Diego Board of Supervisors directed County staff to return to the Board on April 21, 2020 with a further review of hookah.

5. When will the Ordinance take effect?

The Ordinance will be operative on July 1, 2020. The County will work with local businesses to educate them about the Ordinance restrictions and requirements to help them prepare for implementation.

6. How is the County's Ordinance different from the new FDA policy that was issued?

The new U.S. Food and Drug Administration (FDA) enforcement 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 they already consider many 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 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.

7. How is the County's Ordinance different from the new flavored tobacco bill being considered by the California Legislature?

California Senate Bill 793, in its current form, would prohibit the sale of all flavored tobacco products, including mint and menthol. This includes flavored e-cigarettes, e-hookahs, e-pipes, and other vaping devices, as well as all flavored smokable and non-smokable tobacco products, such as cigars, cigarillos, pipe tobacco, chewing tobacco, etc. Violators would be subject to an infraction and a \$250 fine per violation.

The County's Ordinance includes all flavored smoking products and a temporary electronic smoking device ban. The Ordinance does not currently include smokeless tobacco products. The Ordinance also includes prohibition of smoking in outdoor dining areas.

Local action gives the County the tools to address the issue, and there is no guarantee that SB 793 will become law.

8. What will the Board consider in April?

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

- Include smokeless tobacco in the ban 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.

9. Can the one-year moratorium on electronic smoking devices end earlier?

Yes, this ban will end on February 28, 2021, or earlier, based on other triggers contingent on the outcome of the CDC investigation or FDA approval of such devices.

10. Where can I get additional information about the Ordinance?

Additional information about the Ordinance can be found by visiting:

www.amlegal.com/pdffiles/SanDiegoCo/ord10647.pdf