

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HERMOSA BEACH
AMENDING SECTION 5.78.030 (DEFINITIONS) AND
SECTION 5.78.100 (OPERATING REQUIREMENTS) IN
CHAPTER 5.78 OF THE HERMOSA BEACH MUNICIPAL
CODE (TOBACCO RETAILERS) TO BAN TOBACCO
RETAILERS FROM SELLING ALL FLAVORED TOBACCO
PRODUCTS

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 read as follows:

5.78.030 Definitions.

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

“Arm’s Length Transaction” means a Sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A Sale between relatives, related companies or partners, or a Sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm’s Length Transaction.

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

“Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

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

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

“Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor. ~~a Tobacco Product containing an additive with an artificial or~~

~~natural flavor or an herb or spice, including but not limited to a characterizing flavor such as mint, menthol, wintergreen, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee. A public statement or claim made or disseminated by the manufacturer of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces such a characterizing flavor shall constitute presumptive evidence that the Tobacco Product is a Flavored Tobacco Product.~~

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

“Package” 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.

“Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

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

“Restaurant” means a place where people pay to sit and eat meals that are cooked and served on the premises. “Restaurant” does not include a deli where prepared foods are ordered, purchased, and picked up by a Person to be eaten outside or off the premises without service.

“Sale” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

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

“Smoking” means the combustion, electrical ignition or vaporization and/or inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo,

pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation that facilitates the release of gases, particles, or vapors into the air.

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

“Tobacco Product” means:

(1) 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, chewing tobacco, pipe tobacco, snuff, snus; and

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

(3) Notwithstanding any provision of subsections (1), (2) and (3) to the contrary, “Tobacco Product” includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Tobacco Retailer” means any Person who sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.

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

5.78.100 Operating requirements.

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

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

B. Retail Sales to Persons under twenty one prohibited. No Person engaged in Tobacco Retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any Tobacco Product to any Person who is under the legal age under state law

to purchase and possess Tobacco Products, which is age twenty-one (or eighteen if active military).

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

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

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

F. Electronic Smoking Device.

1. ~~No retailer shall sell an Electronic Smoking Device or any product used in an Electronic Smoking Device. It shall be a violation of this Chapter for any Tobaccor Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Electronic Smoking Device.~~ The prohibition in the preceding sentence shall not apply to a retailer that permits only patrons 21 years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the Tobacco Product is sold.
2. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Electronic Smoking Devices, including but not limited to individual Electronic Smoking Devices, packages of Electronic Smoking Devices, or any combination thereof, possesses such Electronic Smoking Devices with intent to sell or offer for sale.

G. Flavored Tobacco Products. ~~No retailer shall sell Flavored Tobacco Products. The prohibition in the preceding sentence shall not apply to a retailer that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the Tobacco Product is sold.~~

1. It shall be a violation of this Chapter for any Tobaccor Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.
2. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored

Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.

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

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

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

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

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

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

J. False and misleading advertising prohibited. A Tobacco Retailer who does not have a valid license pursuant to this Chapter or whose license has been suspended or revoked shall not display any item or advertisement relating to Tobacco Products that promotes the Sale or distribution of such products from the premises or that could lead a reasonable Consumer to believe that Tobacco Products can be obtained at that location. Such 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 on June 1, 2019.

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 ____ day of _____ 2018.

VOTE: AYES:
 NOES:
 ABSTAIN:
 ABSENT:

MAYOR of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney