

LEGISLATIVE DIGEST

URGENCY ORDINANCE NO. 19-0016-U

PROHIBITING THE SALE OF ALL VAPE PRODUCTS, ELECTRONIC SMOKING DEVICES AND FLAVORED TOBACCO

(New language: Bolded and Underscored Dark Blue;
~~Deleted Language: Red~~)

SECTION 1. The title of Manhattan Beach Municipal Code Chapter 4.118 is amended to read as follows:

“Chapter 4.118 - PERMITS FOR TOBACCO PRODUCTS AND ~~OR ELECTRONIC SMOKING DEVICES~~ PROHIBITION OF THE RETAIL SALE OF ELECTRONIC SMOKING DEVICES AND FLAVORED TOBACCO”

SECTION 2. Subsection B of Manhattan Beach Municipal Code Section 4.118.010 is amended to read as follows:

“B. Encourage responsible retailing of tobacco products ~~and electronic smoking devices.~~”

SECTION 3. Manhattan Beach Municipal Code Section 4.118.020 is amended to amend the definitions of “Electronic smoking device” and “Tobacco product” and add a definition of “Characterizing flavor,” to read as follows:

“‘Electronic Smoking Device’ means (1) an electronic ~~and~~ or battery-operated device or delivery system that can deliver an inhalable dose of nicotine to the user or (2) any product intended or sold for use with such a device. ‘Electronic smoking device’ includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaping device, vaporizer, or any other product name or descriptor. ‘Electronic smoking device’ also includes any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver an inhalable dose of nicotine to a person.

‘Tobacco product’ means any product containing, made, or derived from tobacco ~~leaf~~ or nicotine, whether natural or synthetic, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. Tobacco product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

‘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. Characterizing flavor includes flavor in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices.”

SECTION 4. Manhattan Beach Municipal Code Section 4.118.030 is amended to prohibit electronic smoking devices and all flavored tobacco products and delete all references to electronic smoking devices as follows:

“4.118.030 - Requirements and prohibitions.

A. **Permit Required.** It shall be unlawful for any person to act as a retailer of tobacco products ~~and electronic smoking devices~~ in the City without first obtaining and maintaining a valid retailer permit pursuant to this chapter for each location at which that activity is to occur.

B. **Lawful Business Operation.** It shall be a violation of this chapter for any retailer to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices, or the retailing of such products.

C. **Display of Permit.** Each retailer permit shall be prominently displayed in a publicly visible place at the permitted location.

D. **Notice of Minimum Age for Purchase of Tobacco Products ~~and electronic smoking devices~~.** Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products ~~or electronic smoking devices~~ to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the City.

E. **Positive Identification Required.** No retailer shall sell or transfer a tobacco product ~~or electronic smoking devices~~ to another person who appears to be under 30 years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state law to purchase and possess the tobacco product.

F. **Minimum Age for Persons Selling Tobacco ~~or Electronic Smoking Devices~~.** No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products ~~or electronic smoking devices~~ shall engage in retailing.

G. **False and Misleading Advertising Prohibited.** A retailer either without a valid retailer permit or with a suspended retailer permit:

1. Shall keep all tobacco products ~~and electronic smoking devices~~ out of public view.

2. Shall not display any advertisement relating to tobacco products ~~or electronic smoking devices~~ that promotes the sale or distribution of such products from the retailer's location or that could lead a reasonable consumer to believe that tobacco products ~~or electronic smoking devices~~ can be obtained at that location.

H. Flavored Tobacco Products. No retailer shall sell a tobacco product, ~~or any product used in an electronic smoking device, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice (with the exception of mint, menthol, spearmint or wintergreen), including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product. 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~~ that imparts a characterizing flavor.

I. Vending Machines Prohibited. No tobacco product ~~or electronic smoking device~~ shall be sold, offered for sale, or distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including but not limited to, machines or devices that use remote control locking mechanisms.

J. ~~Self-Service Display Prohibited~~ Electronic Smoking Devices. No retailer shall sell an electronic smoking device or a tobacco product that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be used with an electronic smoking device.

- ~~1. Except as permitted in paragraph (J)(2), no electronic smoking device shall be sold, offered for sale, or openly displayed for sale in a manner that is accessible to the general public without the assistance of the retailer or an employee of the retailer.~~
- ~~2. Paragraph (J)(1) shall not apply to the display of electronic smoking devices by a retailer that:~~
 - ~~a. Primarily sells tobacco products and/or electronic smoking devices;~~
 - ~~b. Generates more than sixty (60) percent of its gross revenues annually from the sale of tobacco products, tobacco paraphernalia, or electronic smoking devices;~~
 - ~~c. Does not permit any person under twenty-one (21) years of age, except for active duty military personnel who are eighteen (18)~~

~~years of age or older, to be present or enter the premises at any time;~~

~~d. Does not sell alcoholic beverages or food for consumption on the premises; and~~

~~e. Posts a sign outside the retail location that clearly, sufficiently and conspicuously informs the public that persons under twenty-one (21) years of age, except for active duty military personnel who are eighteen (18) years of age or older, are prohibited from entering the premises."~~

SECTION 5. Subsections C and D of Manhattan Beach Municipal Code Section 4.118.040 are amended to delete references to electronic smoking devices as follows:

"C. No retailer permit may be issued to authorize retailing at any location within a ~~five hundred foot (500')~~ feet radius of a school. The prohibition contained in this subsection C shall not apply to any lawfully operating retailer of tobacco products ~~and/or electronic smoking devices~~ that would otherwise become ineligible to receive or renew a retailer permit due to the creation or relocation of a school.

D. No retailer permit may be issued to authorize retailing at a location which is within a ~~five hundred foot (500')~~ feet radius of a location occupied by another retailer. The prohibition contained in this subsection D shall not apply to existing retailers of tobacco products ~~and/or electronic smoking devices~~ operating lawfully on the date immediately prior to this chapter becoming effective."