

ORDINANCE NO. 2017-01

TOBACCO PRODUCT AND RETAIL SALES CONTROL

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance amends Division 445 of the County Ordinance Code to reduce the accessibility and exposure of tobacco products to minors and the public generally by establishing restrictions on the retail sales of emerging tobacco products, such as electronic smoking devices, regulating the sale of flavored tobacco products and menthol cigarettes, prohibiting tobacco retailing in pharmacies, and establishing a cap on the number of tobacco retailer's licenses issued by the County.

SECTION II. Section 445-2.006 of the County Ordinance Code is amended to read:

445-2.006 Definitions. For the purposes of this division, the following words and phrases have the following meanings:

- (a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- (c) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- (d) "Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.
- (e) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An "electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

- (f) “Enclosed” means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- (g) “Flavored tobacco product” means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor. A tobacco product whose labeling or packaging contains text or an image indicating that the product imparts a characterizing flavor is presumed to be a flavored tobacco product.
- (h) “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.”
- (i) “Package” or “packaging” means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.
- (j) “Menthol cigarettes” means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.
- (k) “Multi-unit residence” means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 of this code is not a multi-unit residence for purposes of this division.
- (l) “Multi-unit residence common area” means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) “Place of employment” means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least 80 percent of the guest rooms in any hotel and motel; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions (e)(1), (2), (6), and (7) of Labor Code section 6404.5 are places

of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.

- (n) “Public place” means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) “Self-service display” means the open display or storage of tobacco products or tobacco paraphernalia 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. A vending machine is a form of self-service display.
- (p) “Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. “Service areas” include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi stands.
- (q) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “smoke” includes, but is not limited to, tobacco smoke, electronic smoking device vapors, marijuana smoke, and smoke from any illegal substance.
- (r) “Smoking” means 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.
- (s) “Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of tobacco products.
- (t) “Tobacco product” means any of the following:
 - (1) Any product containing, made from, 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, and snuff.
 - (2) Any electronic smoking device.

- (3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.
- (4) "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 the product is marketed and sold solely for that approved purpose.
- (u) "Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means 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. (Ords. 2017-01 § 2, 2013-10 § II, 4-9-13, 2010-10 § II, 10-12-10, 2006-66 § 4, 98-43 § 2, 91-44 § 2).

SECTION III. The title of Chapter 445-6 is amended to read:

**Chapter 445-6
TOBACCO SALES**

SECTION IV. Section 445-6.006 is added to the County Ordinance Code, to read:

445-6.006 Flavored tobacco products and menthol cigarettes. It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product or menthol cigarettes within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library. For the purposes of this section, distance is measured by the shortest line connecting any point on the property line of the parcel on which the tobacco retailing business is located to any point on the property line of the other parcel. (Ord. 2017-01 § 4).

SECTION V. Section 445-6.008 is added to the County Ordinance Code, to read:

445-6.008 Packaging and labeling. No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements. (Ord. 2017-01 § 5).

SECTION VI. Section 445-6.010 is added to the County Ordinance Code, to read:

445-6.010 Minimum package size for little cigars and cigars. No tobacco retailer may sell to a consumer any of the following:

- (a) Any little cigar unless it is sold in a package of at least ten little cigars.
- (b) Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least \$5 per cigar, including all applicable taxes and fees. (Ord. 2017-01 § 6).

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SECTION VII. Section 445-6.012 is added to the County Ordinance Code, to read:

445-6.012 Identification required. No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia. (Ord. 2017-01 § 7).

SECTION VIII. Section 445-10.002 of the County Ordinance Code is amended to read:

445-10.002 License requirement.

- (a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.
- (b) No tobacco retailer's license will be issued that:
 - (1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 - (2) Authorizes tobacco retailing in a pharmacy.
 - (3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding 90.
- (c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation. (Ords. 2017-01 § 8, 2003-01 § 3, 98-50 § 2).

SECTION IX. Section 445-10.004 of the County Ordinance Code is amended to read:

445-10.004 Enforcement of state law. If a clerk or employee sells a tobacco product or tobacco paraphernalia to any person under the age of 21, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code section 308 for enforcement under that statute. (Ords. 2017-01 § 9, 2003-01 § 3, 98-50 § 2).

SECTION X. Section 445-10.006 of the County Ordinance Code is amended to read:

445-10.006 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

- (a) "Director" means the director of Contra Costa health services or his or her designee.
- (b) "Drug paraphernalia" has the meaning set forth in California Health & Safety Code section 11014.5.
- (c) "Licensee" means a tobacco retailer who has been issued a tobacco retailer's license in accordance with Section 445-10.010.
- (d) "Pharmacy" means any retail establishment where the profession of pharmacy is practiced by a pharmacist licensed by the State of California under 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.
- (e) "Public health director" means the public health director of Contra Costa County.
- (f) "Tax collector" means the treasurer-tax collector of Contra Costa County.
- (g) "Tobacco retailer" has the definition set forth in Section 445-2.006. (Ords. 2017-01 § 10, 2003-01 § 3, 98-50 § 2).

SECTION XI. Section 445-10.018 of the County Ordinance Code is amended to read:

445-10.018 License suspension.

- (a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.
- (b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:
 - (1) The date of the violation.
 - (2) The address or other description of the location where the violation occurred.
 - (3) The code section(s) violated, or applicable state or federal law violated, and a description of the violation.
 - (4) The time period of the tobacco retailer's license suspension.

- (5) The date of the suspension hearing before the public health director. The notice of suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of suspension hearing is served.
- (c) **Suspension Hearing.** A tobacco retailer's license may be suspended by the public health director after a tobacco retailer's license suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the notice of suspension hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to suspend or not suspend the tobacco retailer's license. The public health director will list in the decision the reason or reasons for the decision and will list the time period of the tobacco retailer's license suspension, if applicable. The written decision will be served as specified in Section 445-10.022.
- (d) **Time Period of License Suspension.**
- (1) A tobacco retailer's license may be suspended for up to 30 days for a first violation.
 - (2) A tobacco retailer's license may be suspended for up to 90 days for a second violation that occurs within five years after the first violation.
 - (3) A tobacco retailer's license may be suspended for up to one year for a third violation and for each subsequent violation that occurs within five years after the first violation.
- (e) **Suspension Appeal.** The decision of the public health director to suspend a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (f) **Final Order.** The tobacco retailer's license suspension becomes a final administrative order at one of the following times:
- (1) On the date of the suspension hearing, if a tobacco retailer fails to appear at a scheduled suspension hearing.
 - (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified.
 - (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors.

- (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors. (Ords. 2017-01 § 11, 2003-01 § 3, 98-50 § 2).

SECTION XII. Section 445-10.024 is added to the County Ordinance Code, to read:

445-10.024 Display and advertisement without license.

- (a) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia while a license is suspended or revoked is a violation of Section 445-10.002.
- (b) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, may not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of these products from the tobacco retailer's location or that could lead a reasonable consumer to believe that these products can be obtained at that location. (Ord. 2017-01 § 12).

SECTION XIII. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on July 18, 2017, by the following vote:

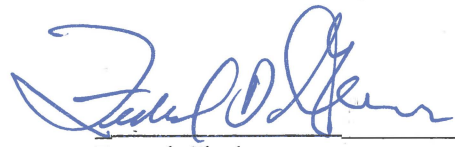
AYES: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator


Board Chair

By:


Stephanie Mello
Deputy

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