



TOBACCO RETAIL LICENSE PROGRAM

FREQUENTLY ASKED QUESTIONS

1/2021

On July 14, 2020, the City Council approved Resolution Number 20-13, amending Chapter 10, Article 1, Sections 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments, restricting and prohibiting the sale of tobacco flavored tobacco products, vaping products and paraphernalia and certain other tobacco related products. The adopted Ordinance regulations and requirements can be access via the City's website at www.hayward-ca.gov and entering "Tobacco Retail" in the search bar to find the program link and Municipal Code section. Below are answers to some questions you may have as a tobacco retailer:

What are the new restrictions associated with this tobacco sales law?

- **The sale of all flavored tobacco products, including menthol cigarettes, is prohibited.** Flavored tobacco products include, but are not limited to, flavored: cigarettes, cigars, little cigars/cigarillos, blunt wraps, chewing tobacco, pipe tobacco, snuff, hookah, e-cigarettes, e-juice, JUUL and other vaporizers, and other flavored electronic smoking devices.
- **The sale of electronic smoking devices, parts, accessories and components is prohibited.** Retailers may not sell any electronic smoking devices that deliver nicotine or other substances to a person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah, or any component, part, or accessory intended to be used with an electronic smoking device, whether sold separately.
- **The sale of vaping devices, vaping products paraphernalia, including (not limited to) bongos, waterpipes, hookahs, vaporizers, parts/components, e-liquids, concentrates, waxes, etc., is prohibited.**
- **The sale of a package of cigarettes, cigars, little cigars/cigarillos, or a single large cigar for less than eight dollars (\$8.00), including all applicable taxes, is prohibited**
- **The redemption of tobacco product discounts and coupons is prohibited.** Retailers may not sell any tobacco products for less than the full retail price.
- **The sale of tobacco products is prohibited in pharmacies.** No tobacco products can be sold in pharmacies as defined by the ordinance, which includes any business operation with a pharmacy component.
- **The sale of CBD, hemp products, or products made from or any amount of a Cannabis plant.**
- **The sale of tobacco products by new tobacco retailers is prohibited within 1,000 feet of youth-populated areas and within 500 feet of existing tobacco retailers.** This distance requirement does not apply to retailers with a valid State and City of Hayward Tobacco Retail License as of 07/14/20, the date the ordinance was approved.

Why were these revisions to the existing tobacco regulations adopted?

These regulations were adopted to: (1) ensure retailers comply with tobacco control laws to protect the health, safety and welfare of the residents in Hayward; and (2) limit youth access to tobacco products. As a result of targeted industry marketing strategies, flavored tobacco products are marketed to youth and young adults, helping to establish tobacco habits that can lead to long-term addiction. Reducing youth exposure to these products will counteract this targeting and reduce the accessibility of these products to youth in our communities.

What is a "flavored tobacco product?" Any tobacco product that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices.

What is a "characterizing flavor?" A "Characterizing flavor" is a taste or aroma, other than the taste or aroma of tobacco.

Examples of characterizing flavors include:

- Menthol, mint or wintergreen
- Fruit flavors such as grape, cherry, mango and watermelon; and candy flavors such as chocolate, vanilla, cotton candy, bubble gum, and licorice
- Alcohol flavors such as wine, apple martini, piña colada, rum, and cognac
- Spice flavors such as clove and cinnamon; and other flavors such as honey, cream, coffee, cocoa, herbs, sugar, and desserts.

How is "tobacco product" defined in this ordinance?

- 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/cigarillos, chewing tobacco, pipe tobacco, snuff, blunt wrap, etc.
- Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- "Tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with 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 and is being marketed and sold solely for that approved purpose.

How is an “electronic smoking device” defined in this ordinance?

- Any “electronic vaping device” that delivers a dose of nicotine or other substances to the person inhaling, including but not limited to, electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.
- Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts.

How is a “vaping device” defined in this ordinance?

“Vaping device” means an electronic smoking device as defined above AND any device or item (or parts thereof) designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, any components and substances, or parts thereof. For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

What if I am not sure if a tobacco product is flavored or restricted?

Most tobacco products are described on the internet. For example, a brand of “tropical fusion” cigarillos is described as “enhanced with delicious tropical flavors.” Please refer to the adopted ordinance, HMC Section 10-1.2780 for information on the restricted products. If you are still unsure, please refer to the contact information below for further assistance.

Can I continue to sell electronic smoking or vaping devices? This law prohibits the sale of electronic smoking and vaping devices, parts or components. The City will begin enforcement of the sale of electronic smoking devices, parts, and components, and all vaping devices and paraphernalia parts and components, etc. at the end of the six-month grace period, **January 14, 2021**. Retailers must fully comply with all ordinance requirements by this time.

When does these new regulations go into effect? The adopted regulations went into effect at the time of the adoption in July 14, 2020. However, the Ordinance provided a six-month grace period for the removal of all prohibited tobacco and vaping products. The City will begin enforcement on the sale of flavored tobacco products and other tobacco product sales restrictions at the end of the six-month grace period, **January 14, 2021**. Retailers must fully comply with all requirements by this time.

What should I do with prohibited tobacco products or electronic smoking and vaping devices and other prohibited products that I have on hand as of now? Tobacco retailers should sell off all of their prohibited inventory by **January 14, 2021**, and discuss with their distributors what to do with unsold products as of that date.

Are electronic smoking device bars, vaping and hookah bars and lounges prohibited in the City of Hayward?

Yes. Since the adoption of the Tobacco Retail License regulations in 2014, electronic smoking device bars, vaping bars, and hookah bars and lounges are prohibited in Hayward and continue to be prohibited.

I have a State tobacco license, do I need to maintain a City of Hayward tobacco license? Yes. This law requires that all tobacco retailers, wholesalers and distributors who wish to engage in the sale of tobacco products in Hayward maintain an annual valid City of Hayward Tobacco Retailer license. For more information, please refer Section 10-1.2780, Tobacco Retail Establishments.

What does the City of Hayward tobacco license require? The license requires that tobacco retailers comply with federal, state and local tobacco related laws, including provisions of Section 10-1.2780 of the Hayward Municipal Code.

How much is the City of Hayward Tobacco Retailer License (TRL) annual license fee? The annual fee is \$400 in accordance with the adopted City of Hayward Master Fee Schedule and is due at the beginning of every calendar year.

What are the penalties if these these laws are violated? Under this law, within any 5-year period:

- A first violation will result in a \$1,500 penalty fee and subject to a 30-day license suspension;
- A second violation will result in a \$3,000 penalty fee and subject to 30-day license suspension;
- A third violation will result in a \$5,000 penalty fee, subject to a 30-day license suspension, and will be referred to the Planning Commission for revocation of the Tobacco Retail License and Conditional Use Permit, if applicable.

Who may I contact for more information?

For more information regarding the City’s adopted tobacco sales regulations or tobacco program, please contact the City of Hayward Code Enforcement Division at (510) 583-4143.