

ORDINANCE NO. 2019-34

SALE OF ELECTRONIC SMOKING DEVICES AND E-LIQUIDS PROHIBITED

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 prohibit the sale of any e-liquid or electronic smoking device that is required to obtain, but has not yet obtained, a premarket review order from the U.S. Food and Drug Administration pursuant to the federal Family Smoking Prevention and Tobacco Control Act. This ordinance also amends Chapter 413-4 of the County Ordinance Code to prohibit the sale or delivery of any e-liquid that contains tetrahydrocannabinol or any other cannabinoid, and to prohibit the sale or delivery of any electronic smoking device that can be used to deliver tetrahydrocannabinol or any other cannabinoid in aerosolized or vaporized form. This ordinance also amends Division 445 of the County Ordinance Code to prohibit the sale of flavored tobacco products and menthol cigarettes.

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) "E-liquid " means any substance that is intended to be consumed in aerosolized or vaporized form using an electronic smoking device, regardless of the nicotine content of the substance.
- (f) "Electronic smoking device" means any device or delivery system that can be used to deliver to a person, in aerosolized or vaporized form, nicotine, tetrahydrocannabinol, or any other cannabinoid, including but not limited to an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vape pen. "Electronic smoking device" includes any component, part, or accessory of such a device, including but not limited to a cartridge, that is used during the operation of the device.
- (g) "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.
- (h) "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.
- (i) "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."
- (j) "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.
- (k) "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.
- (l) "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 is not a multi-unit residence for purposes of this division.
- (m) "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.

- (n) "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; hotels and motels, including all guest rooms; 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.
- (o) "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.
- (p) "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.
- (q) "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.
- (r) "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.
- (s) "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.

- (t) "Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of tobacco products.
- (u) "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 that contains nicotine or can be used to deliver nicotine in aerosolized or vaporized form.
 - (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.
- (v) "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. 2019-34 § 2, 2018-07 § 7, 2017-01 § 2, 2013-10 § 2, 2010-10 § 2, 2006-66 § 4, 98-43 § 2, 91-44 § 2.)

SECTION III. Section 445-6.014 is added to the County Ordinance Code, to read:

445-6.014 Electronic smoking devices and e-liquids. No tobacco retailer may sell, offer for sale, or exchange or offer to exchange for any form of consideration, to a consumer any electronic smoking device or e-liquid where the electronic smoking device or e-liquid:

- (a) Is a new tobacco product as defined in Section 387j(a)(1) of Title 21 of the U.S. Code;
- (b) Requires premarket review under Section 387j of Title 21 of the U.S. Code; and
- (c) Does not have a premarket review order issued under Section 387j(c)(1)(A)(i) of Title 21

of the U.S. Code. (Ord. 2019-34 § 3.)

SECTION IV. Section 413-4.608 of the County Ordinance Code is amended to read:

413-4.608 Retail sale standards. A permittee that sells cannabis or cannabis products shall comply with all of the following standards in addition to the standards specified in Sections 413-4.602 and 413-4.604.

- (a) Within each building in which cannabis or cannabis products are sold, the permittee shall prominently display a sign including the following statement in bold print:

"GOVERNMENT WARNING: CANNABIS IS A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

- (b) Within each building in which cannabis or cannabis products are sold, the permittee shall establish a waiting area that persons must enter prior to entering the retail area. No person may be admitted to the waiting area without first verifying through examination of a government-issued identification card that he or she is at least the minimum age under state law to enter the premises. The waiting area must be physically separated from the retail area. No cannabis or cannabis product may be accessible to customers in the waiting area.
- (c) The permittee or at least one employee shall be physically present in the retail area at all times when any non-employee is in the retail area. Within the retail area, the number of non-employees may not exceed twice the number of employees at any time.
- (d) The sale of any non-cannabis food or beverage, alcohol or alcohol product, or tobacco or tobacco product from the permitted premises is prohibited.
- (e) The sale of more than eight hundred milligrams of tetrahydrocannabinol in the form of edible cannabis products to a single cannabis customer in a single day is prohibited.
- (f) The sale of any cannabis product listed in Section 40300 of Division 1 of Title 17 of the California Code of Regulations is prohibited.

- (g) The sale of any flavored cannabis product for which the primary use is human inhalation of the gases, particles, vapors, or byproducts released as a result of combustion, electrical ignition, or vaporization of the flavored cannabis product, is prohibited.
- (h) A permittee shall not sell, permit to be sold, offer for sale, or display for sale any cannabis or cannabis product by means of self-service display, vending machine, rack, counter-top, or shelf that allows self-service sales for any cannabis or cannabis product. All cannabis and cannabis products must be offered for sale only by means of permittee or employee assistance.
- (i) The sale of any electronic smoking device that contains tetrahydrocannabinol or any other cannabinoid, or can be used to deliver tetrahydrocannabinol or any other cannabinoid in aerosolized or vaporized form, is prohibited. For purposes of this subsection, “electronic smoking device” has the meaning set forth in Section 445-2.006. This subsection does not apply to any device regulated by the federal Family Smoking Prevention and Tobacco Control Act.
- (j) The sale of any e-liquid that contains tetrahydrocannabinol or any other cannabinoid is prohibited. For purposes of this subsection, “e-liquid” has the meaning set forth in Section 445-2.006. This subsection does not apply to any substance regulated by the federal Family Smoking Prevention and Tobacco Control Act. (Ords. 2019-34 § 4, 2018-23 § 2.)

SECTION V. Section 413-4.610 of the County Ordinance Code is amended to read:

413-4.610 Retail delivery standards. A permittee that delivers cannabis or cannabis products from a retail location in the unincorporated area of the county to any location in the unincorporated area of the county shall comply with all of the following standards in addition to the standards specified in Sections 413-4.602 and 413-4.604. A permittee that delivers cannabis or cannabis products from a location outside the unincorporated area of the county to any location in the unincorporated area of the county shall comply with all of the following standards in addition to the standards specified in Section 413-4.602.

- (a) The delivery of more than eight hundred milligrams of tetrahydrocannabinol in the form of edible cannabis products to a single cannabis customer in a single day is prohibited.
- (b) The delivery of any cannabis product listed in Title 17, California Code of Regulations, section 40300, is prohibited.
- (c) The delivery of any flavored cannabis product for which the primary use is human inhalation of the gases, particles, vapors, or byproducts released as a result of combustion, electrical ignition, or vaporization of the flavored cannabis product, is prohibited.

- (d) A permittee may not display any advertisement upon any vehicle that is used for the delivery of cannabis or cannabis products that promotes any activity related to cannabis or that identifies the permittee or the business conducting the delivery.
- (e) A delivery employee who delivers cannabis or cannabis products to a customer shall have in his or her possession a copy of the permit issued under this chapter authorizing the delivery, which shall be made available upon request to law enforcement.
- (f) No delivery employee may deliver cannabis or cannabis products to a customer without first examining a government-issued identification card of the recipient to confirm that the recipient is the customer who requested the delivery and that the recipient is at least the minimum age under state law to purchase the cannabis or cannabis product.
- (g) A delivery employee who delivers cannabis or cannabis products to a customer shall at the time of delivery provide the customer with a written warning that includes the following statement in bold print:

"GOVERNMENT WARNING: CANNABIS IS A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

- (h) The delivery of any electronic smoking device that contains tetrahydrocannabinol or any other cannabinoid, or can be used to deliver tetrahydrocannabinol or any other cannabinoid in aerosolized or vaporized form, is prohibited. For purposes of this subsection, "electronic smoking device" has the meaning set forth in Section 445-2.006. This subsection does not apply to any device regulated by the federal Family Smoking Prevention and Tobacco Control Act.
- (i) The delivery of any e-liquid that contains tetrahydrocannabinol or any other cannabinoid is prohibited. For purposes of this subsection, "e-liquid" has the meaning set forth in Section 445-2.006. This subsection does not apply to any substance regulated by the federal Family Smoking Prevention and Tobacco Control Act. (Ords. 2019-34 § 5, 2018-23 § 2.)

SECTION VI. Section 445-6.006 of the County Ordinance Code is amended to read:

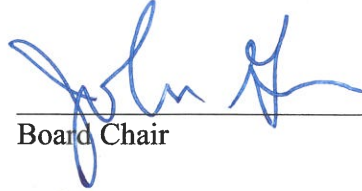
445-6.006 Flavored tobacco products and menthol cigarettes. No tobacco retailer may sell, offer for sale, or exchange or offer to exchange for any form of consideration, to a consumer any flavored tobacco product or menthol cigarette. (Ords. 2019-34 § 6, 2017-01 § 4.)

SECTION VII. 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 East Bay Times, a newspaper published in this County.

PASSED on November 19, 2019, by the following vote:

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover
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



KCK:

H:\Client Matters\2019\HS\Ordinance No. 2019-34 Sale of Electronic Smoking Devices and E-Liquids Prohibited.wpd