

ORDINANCE NUMBER O- 20409 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 02 2014

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF DIVISION 45, AND BY AMENDING SECTIONS 33.4501, 33.4502, 33.3403, 33.4504, 33.4505, 33.4506, 33.4508, 33.4509, 33.4510, 33.4511, 33.4512, 33.4513, 33.4514, 33.4515, 33.4516, 33.4517, 33.4518, AND 33.4519; BY AMENDING CHAPTER 4, ARTICLE 3, BY AMENDING THE TITLE OF DIVISION 11, AND BY AMENDING SECTIONS 43.1101, 43.1102, AND 43.1103, ALL RELATING TO RETAIL SALES OF TOBACCO PRODUCTS, ELECTRONIC CIGARETTES, ELECTRONIC CIGARETTE PARAPHERNALIA, AND VAPING JUICE.

WHEREAS, the City of San Diego currently regulates the sale of tobacco products by requiring a police permit for tobacco retailers, prohibiting the sale of tobacco products in vending machines, and restricting the sales, advertising, and promotion of tobacco products to minors; and

WHEREAS, electronic cigarettes are gaining in popularity, yet the health risks associated with their use are unknown; and

WHEREAS, California Health and Safety Code section 119405 makes it unlawful to sell or furnish electronic cigarettes to minors; and

WHEREAS, vaping juice is often packaged and marketed to attract youth; and

WHEREAS, to protect public health and safety, particularly of our youth, it is prudent to regulate the sale of electronic cigarettes, electronic cigarette paraphernalia, and vaping juice in the same manner that sales of tobacco products are currently regulated; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code is amended by amending the title of Division 45, and by amending sections 33.4501, 33.4502, 33.3403, 33.4504, 33.4505, 33.4506, 33.4508, 33.4509, 33.4510, 33.4511, 33.4512, 33.4513, 33.4514, 33.4515, 33.4516, 33.4517, 33.4518, and 33.4519, to read as follows:

**Division 45: Permits for Sale of Tobacco Products,
Electronic Cigarettes, Electronic Cigarette Paraphernalia,
and Vaping Juice**

§33.4501 Purpose and Intent

It is the purpose and intent of this Division to provide for local regulation of retail businesses that sell tobacco products, tobacco paraphernalia, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice by requiring police permits.

The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products and electronic cigarettes to minors to protect their health, welfare, and safety. Further, because of the increasing popularity of electronic cigarettes and the unknown health risks associated with their use, it is the purpose of this Division to regulate the sale of vaping juice, which is often packaged and marketed to attract youth. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer and electronic cigarette retailer applicants and permittees. It is further the intent that recoveries hereunder shall be used to pay the costs of administering and enforcing this Division.

§33.4502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Electronic cigarette has the same meaning as in San Diego Municipal Code section 43.1001.

Electronic cigarette paraphernalia includes any refill, cartridge, component, accessory, appurtenance, attachment, accoutrement, fitting, apparatus, hardware, material, or equipment designed, packaged, marketed, or displayed for the purpose of use with an *electronic cigarette*. *Electronic cigarette paraphernalia* does not include any charging device intended for the battery component of an *electronic cigarette*.

Electronic cigarette retailer means any person who owns or operates, in whole or in part, a business for profit or not for profit who engages in *electronic cigarette retailing*.

Electronic cigarette retailing means selling, offering for sale, or offering to exchange for any form of consideration, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.

License has the same meaning as in San Diego Municipal Code section 33.0201.

Person has the same meaning as in San Diego Municipal Code section 11.0210.

Police permit has the same meaning as in San Diego Municipal Code section 33.0201.

Tobacco paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item

designed, packaged, marketed, or displayed for the purpose of smoking or ingestion of *tobacco products*, excluding lighters.

Tobacco products means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

Tobacco retailer means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

Tobacco retailing means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, *tobacco products* or *tobacco paraphernalia*.

Vaping juice means any liquid or flavoring, which may or may not contain nicotine, designed, packaged, marketed, or displayed for the purpose of use with an *electronic cigarette*.

§33.4503 Police Permit Required for Tobacco Retailer and Electronic Cigarette Retailer

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* or as an *electronic cigarette retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* or *electronic cigarette retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* at that location.
- (c) A *tobacco retailer* or *electronic cigarette retailer* shall obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing* or *electronic cigarette retailing*.

(d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* or *electronic cigarette retailer* at any location other than a fixed location.

(e) [No change in text.]

§33.4504 Enforcement Authority

The *Chief of Police* shall administer and enforce this Division. The *Chief of Police* shall be responsible for accepting applications for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer*, and for issuing the permit. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division.

§33.4505 Tobacco Retailer or Electronic Cigarette Retailer Permit Application Contents

(a) Each applicant for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall furnish the following information to the *Chief of Police*:

(1) through (2) [No change in text.]

(3) The address of the proposed *tobacco retailer* or *electronic cigarette retailer* business location.

(4) through (12) [No change in text.]

(13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* or *electronic*

cigarette retailing business is to be conducted, and a copy of the lease or rental agreement:

(14) [No change in text.]

(15) For *tobacco retailers*, information regarding *licenses* required under the “Cigarette and Tobacco Products Licensing Act of 2003,” found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for *licenses*, *licenses* issued, and any documentation regarding the reasons for the denial of such *license*.

(16) [No change in text.]

(b) In addition to the information required by San Diego Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* or *electronic cigarette retailing permit* shall furnish the following information to the *Chief of Police*:

(1) through (5) [No change in text.]

(c) An applicant for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in San Diego Municipal Code section 33.4510.

§33.4506 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *tobacco retailing* or *electronic cigarette retailing* business is deemed an applicant and each shall provide the information required in San Diego Municipal Code section 33.4505.

§33.4507 Designation of Responsible Managing Officer, Signature on Applications

[No change in text.]

§33.4508 Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit

In addition to the requirements of San Diego Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall furnish to the *Chief of Police* copies of all state *licenses*, *permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* or *electronic cigarette retailing* business.

§33.4509 Investigation Prior to Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit

- (a) Upon completion of the investigation required in San Diego Municipal Code section 33.0301 the *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be conducted as prescribed in Chapter 3, Article 3, Division 3 of the San Diego Municipal Code.

§33.4510 Grounds for Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit

- (a) In addition to the grounds for denial stated in San Diego Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced administrative action against any type of *license* for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. (“Stop Tobacco Access to Kids Enforcement Act” or the “STAKE Act”), Business and Professions Code sections 22970, et seq. (“Cigarette and Tobacco Products Licensing Act of 2003”), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.
- (b) In addition to the grounds for denial stated in San Diego Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as an *electronic cigarette retailer* shall be denied if within five years immediately preceding the date of the filing of the application the applicant has been convicted of violating California Health and Safety Code section 119405(a), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code

section 415, in satisfaction of, or as a substitute for, an original charge of Health and Safety Code section 119405(a).

§33.4511 Right to Appeal Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit

Any applicant denied a permit to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be afforded an appeal as prescribed in Chapter 3, Article 3, Division 5 of the San Diego Municipal Code.

§33.4512 Permit Fees

(a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*.

The Mayor shall assess a fee for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* according to the schedule set in the City Clerk's Composite Rate Book. Fees will be reviewed annually.

(b) [No change in text.]

§33.4513 Tobacco Retailer and Electronic Cigarette Retailer Operating Requirements

(a) *Tobacco retailers* and *electronic cigarette retailers* shall keep and post *police permits*, issued under this Division, in the manner prescribed in San Diego Municipal Code sections 33.0105(a) and (c). This subsection is regulatory only.

(b) [No change in text.]

(c) *Electronic cigarette retailers* shall not allow, at any location for which they have a *police permit* to operate as an *electronic cigarette retailer*, a

violation of California Health and Safety Code section 119405(a).

Electronic cigarette retailers shall be responsible for the acts of others who violate section 119405(a) at any location for which they have a *police permit* to operate as an *electronic cigarette retailer*. This subsection is regulatory only.

- (d) [No change in text.]
- (e) Clerks who transact sales of *tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice* in *tobacco retailer* or *electronic cigarette retailer* establishments shall be the minimum legal age to purchase *tobacco products* and *electronic cigarettes* (currently 18 years of age). This subsection is regulatory only.
- (f) *Tobacco retailers* and *electronic cigarette retailers* shall check the age of purchasers of *tobacco products, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* who reasonably appear to be under the age of 27. This subsection is regulatory only.

§33.4514 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be conducted as prescribed in San Diego Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this Division is suspended or revoked, all *tobacco products, tobacco paraphernalia, electronic cigarettes, electronic*

cigarette paraphernalia, and *vaping juice* shall be removed from public view for the duration of the suspension or revocation.

§33.4515 Additional Penalties

A *police permit* issued under this Division may be revoked if a *person* operating as a *tobacco retailer* or *electronic cigarette retailer* is convicted of a violation of Health and Safety Code section 11364.7, or a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of Health and Safety Code section 11364.7.

§33.4516 Tobacco Retailer and Electronic Cigarette Retailer Permits Not Transferable

[No change in text.]

§33.4517 Grandfather Clause

For *electronic cigarette retailers*, notwithstanding section 33.4510(b), *convictions* for offenses listed in section 33.4510(b) shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of Ordinance No. O-20409

§33.4518 Operative Date, Requirement for Police Permit

For a new business, a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* must be obtained upon the issuance of a business tax certificate. For an existing business, a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* must be obtained upon renewal of the tax certificate. For *electronic cigarette retailers*, during the first year in which Ordinance No. O-20409 in effect, any existing business whose tax certificate renewal has not yet become due may operate as an *electronic cigarette*

retailer only if a currently valid business tax certificate is in effect for each location where *electronic cigarettes, electronic cigarette paraphernalia, or vaping juice* is sold.

§33.4519 Reporting

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Livable Neighborhoods Committee; report to the Public Safety and Livable Neighborhoods Committee the following information:

- (a) through (c) [No change in text.]
- (d) The estimated rate of illegal sales of *electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* to minors within the City of San Diego.

Section 2. That Chapter 4, Article 3, of the San Diego Municipal Code is amended by amending the title of Division 11, and by amending sections 43.101, 43.1102, and 43.1103, to read as follows:

Division 11: Prohibition of Tobacco Vending Machines and Electronic Cigarette Vending Machines

§43.1101 Purpose and Intent

Because smoking is responsible for the premature deaths of Americans each year from lung cancer, heart disease, respiratory illnesses, and other diseases; environmental tobacco smoke is reportedly responsible for the additional deaths of nonsmokers; and the U.S. Surgeon General has declared that nicotine is as addictive as cocaine or heroin; that no other addictive product, drug or cancer-causing product or drug is sold through vending machines; the declared purpose

of this Division is to prohibit the sale of *tobacco products* through vending machines to protect the health and welfare of the public.

Further, because of the increasing popularity of *electronic cigarettes* and the unknown health risks associated with their use, it is the purpose of this Division to prohibit the sale of *electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* in vending machines, to protect the health and welfare of the public, particularly youth.

§43.1102. Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Electronic Cigarette Vending Machine means any machine or device designed for or used for the vending of *electronic cigarettes, electronic cigarette paraphernalia, or vaping juice* as defined in San Diego Municipal Code section 33.4502, upon the insertion of coins, paper currency, trade checks, slugs, or electronic payment cards.

Tobacco Vending Machine means any machine or device designed for or used for the vending of *tobacco products* as defined in San Diego Municipal Code section 33.4502, upon the insertion of coins, paper currency, trade checks, slugs, or electronic payment cards.

§43.1103 Prohibitions

- (a) It is unlawful for any person to sell or distribute, or cause to be sold or distributed, any *tobacco products* from a *Tobacco Vending Machine*.

- (b) It is unlawful for any person to sell or distribute, or cause to be sold or distributed, any *electronic cigarette, electronic cigarette paraphernalia, or vaping juice* from an *Electronic Cigarette Vending Machine*.

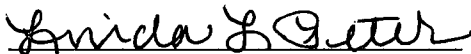
§43.1104 Penalty

[No change in text.]

Section 3. That a full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Linda L. Peter
Deputy City Attorney

LLP:amt:ccm:jdf
6/9/2014
7/30/2014 REV.
Or.Dept:Council Dist.5
833490

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 16 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10/2/14
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on SEP 16 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 02 2014

AUTHENTICATED BY: KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance ~~was not~~ finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 28 2014, and on OCT 02 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20409