

5/17/2022 #51A

(O 2022-78)  
COR.COPY

ORDINANCE NUMBER O- 21455 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 02 2022

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 45 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 33.4501, 33.4502, 33.4505, 33.4510, 33.4512, AND 33.4513; BY REPEALING SECTION 33.4517; BY RETITLING, AMENDING, AND RENUMBERING SECTION 33.4518 TO 33.4517; BY AMENDING AND RENUMBERING SECTION 33.4519 TO 33.4518; BY AMENDING CHAPTER 5, ARTICLE 8, DIVISION 3, BY AMENDING SECTIONS 58.0301, 58.0304, 58.0305, AND 58.0307; BY RETITLING AND AMENDING SECTION 58.0308; BY REPEALING SECTION 58.0309; AND BY RENUMBERING SECTION 58.0310 TO 58.0309, ALL RELATING TO THE SALE AND ADVERTISING OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES TO PERSONS UNDER 21 YEARS OF AGE.

WHEREAS, in 2016, the California Legislature passed a series of tobacco control laws, including Senate Bill 7; and

WHEREAS, Senate Bill 7 prohibits the sale of tobacco products, including electronic cigarettes, to persons under 21 years of age; and

WHEREAS, Senate Bill 7 has an exemption allowing active duty military personnel 18 years of age or older to purchase tobacco products, including electronic cigarettes, with proof of active military duty status; and

WHEREAS, these amendments to the San Diego Municipal Code are necessary to reconcile the City's regulations for retail sales of tobacco products and electronic cigarettes with current state law; NOW THEREFORE,

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

Section 1. That Chapter 3, Article 3, Division 45 of the San Diego Municipal Code is amended by amending sections 33.4501, 33.4502, 33.4505, 33.4510, 33.4512, and 33.4513; by repealing section 33.4517; by retitling, amending, and renumbering section 33.4518 to 33.4517; and by amending and renumbering section 33.4519 to 33.4518, to read as follows:

**Article 3: Police Regulated Occupations and Businesses**

**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 persons* under 21 years of age 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 fees and charges recovered 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* through *Electronic cigarette retailing* [No change in text.]

*Flavored tobacco products* has the same meaning as in San Diego Municipal Code section 42.1602.

*License* through *Tobacco paraphernalia* [No change in text.]

*Tobacco products* means any substance derived from tobacco or nicotine, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

*Tobacco retailer* through *Vaping juice* [No change in text.]

**§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 (8) [No change in text.]

(9) Government-issued photo identification such as a California Driver License, Identification Card, or United States Passport.

(10) through (16) [No change in text.]

(b) [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 the applicant has not *been convicted* of or faced administrative action based on violations of the offenses listed in San Diego Municipal Code section 33.4510.

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

**Retailer Permit**

In addition to the grounds for denial stated in San Diego Municipal Code section 33.0305(a) through (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 conviction 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.

**§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 Rate Book of City Fees and Charges.

(b) [No change in text.]

**§33.4513 Tobacco Retailer and Electronic Cigarette Retailer Operating Requirements**

(a) through (b) [No change in text.]

(c) A *tobacco retailer* shall display in a conspicuous and prominent location near *tobacco products*, in a manner established by the *Chief of Police*, information on how to report violations of tobacco control laws including, but not limited to, reporting of sales of tobacco products to *persons* under 21 years of age.

(d) 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 at least 18 years of age. This subsection is regulatory only.

(e) *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

(f) Clerks who transact sales of *tobacco products*, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* in *tobacco retailer* or *electronic cigarette retailer* establishments to *persons* 18 years of age or

older claiming the military exemption shall request an identification card issued by the U.S. Armed Forces as proof of active duty military service.

**§33.4517 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.

**§33.4518 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 (b) [No change in text.]

(c) The estimated rate of illegal sales of *tobacco products, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice to persons* under 21 years of age within the City of San Diego.

(d) The estimated rate of illegal sales of *flavored tobacco products* within the City of San Diego.

Section 2: That Chapter 5, Article 8, Division 3 of the San Diego Municipal Code is amended by amending sections 58.0301, 58.0304, 58.0305, and 58.0307; by retitling and amending section 58.0308; by repealing section 58.0309; and by renumbering section 58.0310 to 58.0309, to read as follows:

**Article 8: Minors**

**Division 3: Restricting the Sale, Advertising and Promotion  
of Tobacco Products to Minor**

**§58.0301 Definitions**

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

*Advertising* means printed matter that calls the public's attention to things for sale.

*Advertising display sign* means a sign, sign-board, billboard, poster, banner, or the like that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

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

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

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

*Electronic cigarette paraphernalia* has the same meaning as in San Diego Municipal Code section 33.4502.

*Electronic cigarette retailer* has the same meaning as in San Diego Municipal Code section 33.4502.

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

*Self-service display* [No change in text.]

*Tobacco product* has the same meaning as in San Diego Municipal Code section 33.4502.

*Tobacco retailer* has the same meaning as in San Diego Municipal Code section 33.4502.

*Vendor-assisted through Vaping juice* [No change in text.]

**§58.0304 Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments**

- (a) Sections 58.0302 and 58.0303 do not apply to retail establishments where access to the premises by *persons* under 21 years of age is prohibited by law.
- (b) [No change in text.]

**§58.0305 Identification Required for Purchase of Tobacco Products and Electronic Cigarettes**

It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell any *tobacco product*, *electronic cigarette*, *electronic cigarette paraphernalia*, or *vaping juice* to an individual who appears to be less than 27 years of age without first verifying, by means of photographic identification containing the bearer's date of birth, that the purchaser is not younger than 21 years of age, unless the seller has some other reliable basis for determining the purchaser's age.



**§58.0307      Distribution of Tobacco or Electronic Cigarette Samples or Promotional  
Items**

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to distribute free *tobacco products* or promotional items, except in enclosed areas where *persons* under 21 years of age are not permitted.
- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic retailer* to distribute free *electronic cigarettes*, *electronic cigarette paraphernalia*, *vaping juice*, or promotional items, except in enclosed areas where *persons* under 21 years of age are not permitted.

**§58.0308      Posting of Signs Regarding Sales to Persons Under Twenty-One Years of Age**

- (a) Every *person* who sells or deals in *tobacco products* shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of *tobacco products* to *persons* under 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase *tobacco products*. The letters of the sign shall be at least one-half inch in height.
- (b) Any sign meeting the content requirements of California Business and Professions Code section 22952(b) and regulations promulgated thereunder satisfies section 58.0308(a).
- (c) [No change in text.]
- (d) Every *person* who sells or deals in *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* shall post conspicuously in their

place of business at each point of purchase a notice stating that the sale of *electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* to *persons* under 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase *electronic cigarettes, electronic cigarette paraphernalia, and vaping juice*. The letters of the sign shall be at least one-half inch in height.

- (e) [No change in text.]

**§58.0309 Enforcement**

- (a) Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code section 12.0201. Any *Director* may also seek injunctive relief and civil penalties pursuant to Municipal Code section 12.0202 or pursue any administrative remedy as provide in Chapter 1 of this Code.
- (b) Any *person* who commits or proposes to commit an act in violation of this Division is subject to the jurisdiction of a court of competent jurisdiction. An action for injunction may be brought by an aggrieved *person*, or any *person* or entity which will fairly and adequately represent the interests of the protected class.
- (c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys' fees as determined by the court. In addition to all other damages, the court may

award the plaintiffs a civil penalty of up to one thousand dollars  
(\$1,000.00) for each violation.

- (d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved *person* may have and are not intended to be exclusive.

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

Section 4. That this Ordinance shall take effect on January 1, 2023.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Lara E. Easton

Lara E. Easton  
Deputy City Attorney

LEE:hm  
April 5, 2022  
December 28, 2022 COR.COPY  
Or.Dept:PSE  
Doc. No.: 2856899

I hereby certify that the foregoing Ordinance was passed by the Council of the City of  
San Diego, at this meeting of MAY 17 2022

ELIZABETH S. MALANDRINO  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

~~Vetoed:~~ \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

(NOTE: See memo and signature page.)

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM**

**DATE:** December 28, 2022

**TO:** Elizabeth Maland, Office of the City Clerk

**FROM:** Lara E. Easton, Deputy City Attorney

**SUBJECT:** Corrected Copy: O 2022-78 (Strikeout and Clean)  
Sale and Advertising of Tobacco Products and Electronic Cigarettes to Persons  
Under 21 Years of Age.

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This office is submitting a corrected copy of Ordinance O-2022-78 to include the following language in section 58.0309.

- (c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys' fees as determined by the court. In addition to all other damages, the court may award the plaintiffs a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.
- (d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved *person* may have and are not intended to be exclusive.

Please see the changes reflected in the attached Strikeout and Clean versions of this Ordinance.

LEE:hm  
Doc. No.: 3176886

cc: Matthew Hilario  
Gilbert Sanchez

Section 4. That this Ordinance shall take effect on January 1, 2023.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Lara E. Easton  
Lara E. Easton  
Deputy City Attorney

LEE:hm  
April 5, 2022  
Or.Dept:PSE  
Doc. No.: 2856899

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 17 2022.

ELIZABETH S. MALAND.  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 6/2/22  
(date)

[Signature]  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

**STRIKEOUT ORDINANCE**

OLD LANGUAGE: ~~Struck Out~~  
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 45 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 33.4501, 33.4502, 33.4505, 33.4510, 33.4512, AND 33.4513; BY REPEALING SECTION 33.4517; BY RETITLING, AMENDING, AND RENUMBERING SECTION 33.4518 TO 33.4517; BY AMENDING AND RENUMBERING SECTION 33.4519 TO 33.4518; BY AMENDING CHAPTER 5, ARTICLE 8, DIVISION 3, BY AMENDING SECTIONS 58.0301, 58.0304, 58.0305, AND 58.0307; BY RETITLING AND AMENDING SECTION 58.0308; BY REPEALING SECTION 58.0309; AND BY RENUMBERING SECTION 58.0310 TO 58.0309, ALL RELATING TO THE SALE AND ADVERTISING OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES TO PERSONS UNDER 21 YEARS OF AGE.

**Article 3: Police Regulated Occupations and Businesses**

**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~~ 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~~ tobacco products and

~~electronic cigarettes~~ electronic cigarettes to minors persons under 21 years of age to protect their health, welfare, and safety. Further, because of the increasing popularity of ~~electronic cigarettes~~ 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~~ 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~~ tobacco retailer and ~~electronic cigarette retailer~~ electronic cigarette retailer applicants and permittees. It is further the intent that fees and charges 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* through *Electronic cigarette retailing* [No change in text.]

*Flavored tobacco products* has the same meaning as in San Diego Municipal Code section 42.1602.

*License* through *Tobacco paraphernalia* [No change in text.]

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

*Tobacco retailer* through *Vaping juice* [No change in text.]



**§33.4505 Tobacco Retailer or Electronic Cigarette Retailer Permit Application**

**Contents**

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 (8) [No change in text.]

(9) ~~Photographs of the applicant as specified by the Chief of Police~~  
Government-issued photo identification such as a California Driver License, Identification Card, or United States Passport.

(10) through (16) [No change in text.]

(b) [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~~ the applicant has not ~~been convicted~~ been convicted of or faced administrative action based on violations of the offenses listed in San Diego Municipal Code section 33.4510.

**§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) ~~through~~ (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~~ 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~~ conviction 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).~~

**§33.4512     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 of City Fees and Charges. ~~Fees will be reviewed annually.~~

(b) [No change in text.]

**§33.4513 Tobacco Retailer and Electronic Cigarette Retailer Operating Requirements**

(a) through (b) [No change in text.]

(e) ~~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)(c) A tobacco retailer shall display in a conspicuous and prominent location near tobacco products, ~~information~~, in a manner established by the Chief of Police, information on how to report violations of tobacco control laws including, but not limited to, reporting of sales of tobacco products to ~~minors~~ persons under 21 years of age, to the Chief of Police.

(e)(d) 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 at least~~  
18 years of age). This subsection is regulatory only.

~~(f)(e)~~ *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.*

~~(f)~~ Clerks who transact sales of tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice in tobacco retailer or electronic cigarette retailer establishments to persons 18 years of age or older claiming the military exemption shall request an identification card issued by the U.S. Armed Forces as proof of active duty military service.

**~~§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 is 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.~~

**§33.45198 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 (b) [No change in text.]
- (c) The estimated rate of illegal sales of *tobacco products, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* to ~~minors~~ persons under 21 years of age within the City of San Diego.
- (d) The estimated rate of illegal sales of ~~electronic cigarettes, electronic cigarette paraphernalia, and vaping juice~~ flavored tobacco products to minors within the City of San Diego.

**Article 8: Minors**

**Division 3: Restricting the Sale, Advertising and Promotion  
of Tobacco Products to Minors**

**§58.0301 Definitions**

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

*“Advertising”* means printed matter that calls the public’s attention to things for sale.

*"Advertising display sign"* means a sign, sign-board, billboard, poster, or banner, or the like that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

*"City"* has the same meaning as in San Diego Municipal Code section 11.0210.

*"Director"* has the same meaning as in San Diego Municipal Code section 11.0210.

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

*Electronic cigarette paraphernalia* has the same meaning as in San Diego Municipal Code section 33.4502.

*Electronic cigarette retailer* has the same meaning as in San Diego Municipal Code section 33.4502.

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

*Self-service display* [No change in text.]

*"Tobacco product"* ~~means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco~~ has the same meaning as in San Diego Municipal Code section 33.4502.

*Tobacco retailer* has the same meaning as in San Diego Municipal Code section 33.4502.

*Vendor-assisted through Vaping juice* [No change in text.]

**§58.0304 Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments**

- (a) Sections 58.0302 and 58.0303 do not apply to ~~commercial~~ retail establishments where access to the premises by *persons* under ~~18~~ 21 years of age is prohibited by law.
- (b) [No change in text.]

**§58.0305 Identification Required for Purchase of Tobacco Products and Electronic Cigarettes**

It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell any *tobacco product*, *electronic cigarette*, *electronic cigarette paraphernalia*, or *vaping juice* to an individual who appears to be less than 27 years of age, without first verifying by means of photographic identification containing the bearer's date of birth, that the purchaser is not younger than ~~18~~ 21 years of age, unless the seller has some other reliable basis for determining the purchaser's age.

**§58.0307 Distribution of Tobacco or Electronic Cigarette Samples or Promotional Items**

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to distribute free *tobacco products* or promotional items, except in enclosed areas where ~~minors~~ persons under 21 years of age are not permitted.

- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic retailer* to distribute free *electronic cigarettes*, *electronic cigarette paraphernalia*, *vaping juice*, or promotional items, except in enclosed areas where ~~minors~~ persons under 21 years of age are not permitted.

§58.0308      **Posting of Signs Regarding Sales to Minors Persons Under Twenty-One Years of Age**

- (a) Every *person* who sells or deals in *tobacco products* shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of *tobacco products* to *persons* under ~~18~~ 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase *tobacco products*. The letters of the sign shall be at least one-half inch in height.
- (b) Any sign meeting the content requirements of California Business and Professions Code section 22952(b) and regulations promulgated thereunder, ~~and the posting requirements of California Penal Code section 308(e)~~, satisfies section 58.0308(a).
- (c) [No change in text.]
- (d) Every *person* who sells or deals in *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of *electronic cigarettes*, *electronic cigarette paraphernalia*, and *vaping juice* to *persons* under ~~18~~ 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to



purchase *electronic cigarettes, electronic cigarette paraphernalia, and vaping juice*. The letters of the sign shall be at least one-half inch in height.

- (e) [No change in text.]

**§58.0309 Extensions for Compliance**

- (a) ~~Any business that needs to make modifications to its business premises in order to comply with sections 58.0302 or 58.0306 of this Division, must comply within 60 calendar days after September 6, 2015.~~
- (b) ~~Any business owner may apply to the City for an additional sixty-day extension of time within which to comply with sections 58.0302 or 58.0306 of this Division, provided that the application for extension is submitted on or before the last day of the 60-day compliance period authorized by section 58.0309(a).~~
- (c) ~~It is unlawful for any person who sells or deals in tobacco products to fail to post a sign in accordance with Section 58.0310(a) or (b).~~

**§58.031002 Enforcement**

- (a) Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code section 12.0201. Any *Director* may also seek injunctive relief and civil penalties pursuant to Municipal Code section 12.0202 or pursue any administrative remedy as provide in Chapter 1 of this Code.

- (b) Any *person* who commits or proposes to commit an act in violation of this Division is subject to the jurisdiction of a court of competent jurisdiction.  
An action for injunction may be brought by an aggrieved *person*, or any *person* or entity which will fairly and adequately represent the interests of the protected class.
- (c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys' fees as determined by the court. In addition to all other damages, the court may award the plaintiffs a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.
- (d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved *person* may have and are not intended to be exclusive.

LEE:hm  
April 5, 2022  
December 28, 2022 COR.COPY  
Or.Dept:PSE  
Doc. No.: 2777240

Passed by the Council of The City of San Diego on MAY 17 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 02 2022.

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

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

By , 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

APR 25 2022

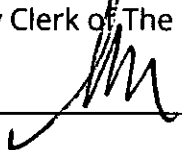
and on

JUN 02 2022

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 , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21455