

5/17/2022 #51B

(O-2022-79)  
(COR. COPY)

ORDINANCE NUMBER O- 21456 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 02 2022

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 16, SECTIONS 42.1601, 42.1602, AND 42.1603, PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS.

WHEREAS, tobacco use is the leading preventable cause of deaths in the United States, killing over 480,000 persons annually, and is a major cause of chronic smoking-related illness; and

WHEREAS, the 2017 National Survey on Drug Use and Health found that four-fifths of people who smoke become daily smokers before turning 21; and

WHEREAS, electronic cigarettes, known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems, are battery-operated devices used to inhale aerosols that typically contain tobacco or nicotine; and

WHEREAS, according to the California Department of Public Health, e-cigarettes are available in over 15,000 flavors, many of which appeal to youth, such as cotton candy, bubble gum, or "unicorn poop," with some flavored tobacco products sharing the same names, packaging, and flavor chemicals as popular candy brands like Jolly Rancher and Life Savers; and

WHEREAS, 86.4 percent of youth tobacco users reported using flavored tobacco products; and

WHEREAS, the findings of the 2019 National Youth Tobacco Survey (Youth Survey), released by the Centers for Disease Control and Prevention and the Food and Drug Administration, showed that more than 5 million middle and high school students reported

current e-cigarette use, an increase of more than 1.5 million students from the 2018 National Youth Tobacco Survey; and

WHEREAS, the findings of the 2019 Youth Survey also indicated that, among current exclusive e-cigarette users, approximately 72 percent of high school students and 60 percent of middle school students used flavored e-cigarettes and tobacco products; and

WHEREAS, according to a 2021 University of California San Diego study, youth who use electronic cigarettes are three times more likely to become daily cigarette smokers; and

WHEREAS, the City Council wishes to strengthen local tobacco regulations and promote public health, safety, and welfare of the community, particularly youth, by amending the San Diego Municipal Code to prohibit the sale of flavored tobacco products; NOW THEREFORE,

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

Section 1. That Chapter 4, Article 2 of the San Diego Municipal Code is amended by adding new Division 16, sections 42.1601, 42.1602, and 42.1603, to read as follows:

**§42.1601 Purpose and Intent**

Tobacco use is one of the leading causes of preventable death in the United States. *Electronic cigarettes* use flavored nicotine that is sold and consumed in thousands of flavors that appeal to youth, such as bubblegum and cotton candy. These flavors hide the harshness of nicotine, making initiation of nicotine use more appealing to youth. It is the purpose and intent of this Division to provide for the public health, safety, and welfare of the community, particularly youth, by prohibiting the sale or distribution of *flavored tobacco products*.

**§42.1602 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 retailer* has the same meaning as in San Diego Municipal Code section 33.4502.

*Flavored tobacco products* means a *tobacco product* that emits a taste or smell, other than the taste or smell of tobacco, including but not limited to, any taste or smell relating to fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic beverage, herb, or spice. *Flavored tobacco products* do not include products approved by the Food and Drug Administration for sale as a tobacco cessation product or other therapeutic purposes, where the product is marketed and sold solely for such an approved purpose.

*Premium cigars* means any cigar that is handmade, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars. A *premium cigar* does not have filter, tip, or nontobacco mouthpiece.

*Shisha* means a tobacco product that is mixed with molasses, honey, fruit, or dried fruits and is sold for use in a hookah.

*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.

**§42.1603 Sale or Distribution of Flavored Tobacco Products; Exemptions**

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell or distribute *flavored tobacco products*.
- (b) This section does not apply to the sale of *shisha*, *premium cigars*, or loose-leaf tobacco.

Section 2. 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 3. That this Ordinance shall take effect and be in force on January 1, 2023.

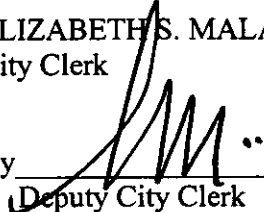
APPROVED: MARA W. ELLIOTT, City Attorney

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

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04/05/2022  
04/21/2022 COR. COPY  
Or.Dept: PSE  
Doc. No.: 2856892

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   
Deputy City Clerk

Approved: 6/2/22  
(date)

  
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 4, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 16, SECTIONS 42.1601, 42.1602, AND 42.1603 PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS.

**§42.1601**      **Purpose and Intent**

Tobacco use is one of the leading causes of preventable death in the United States. *Electronic cigarettes* use flavored nicotine that is sold and consumed in thousands of flavors that appeal to youth, such as bubblegum and cotton candy. These flavors hide the harshness of nicotine, making initiation of nicotine use more appealing to youth. It is the purpose and intent of this Division to provide for the public health, safety, and welfare of the community, particularly youth, by prohibiting the sale or distribution of *flavored tobacco products*.

**§42.1602**      **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 retailer has the same meaning as in San Diego Municipal Code section 33.4502.

Flavored tobacco products means a tobacco product which emits a taste or smell, other than the taste or smell of tobacco, including but not limited to, any taste or smell relating to fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic beverage, herb, or spice. Flavored tobacco products do not include products approved by the Food and Drug Administration for sale as a tobacco cessation product or other therapeutic purposes, where the product is marketed and sold solely for such an approved purpose.

Premium cigars means any cigar that is handmade, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars. A premium cigar does not have filter, tip, or nontobacco mouthpiece.

Shisha means a tobacco product that is mixed with molasses, honey, fruit, or dried fruits and is sold for use in a hookah.

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.

**§42.1603 Sale or Distribution of Flavored Tobacco Products Prohibited; Exemptions**

- (a) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to sell or distribute flavored tobacco products.

(b) This section does not apply to the sale of *shisha, premium cigars, loose-*  
leaf tobacco.

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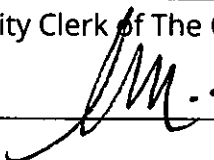


Passed by the Council of The City of San Diego on MAY 17 2022, by the following vote:

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"/>

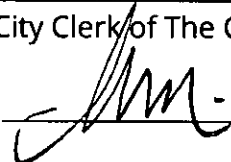
Date of final passage JUN 02 2022

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- 21456