

ORDINANCE NO. 5372

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 7.80 OF THE MONTEREY COUNTY CODE TO PROHIBIT TOBACCO RETAILERS FROM SELLING FLAVORED TOBACCO PRODUCTS AND SINGLE USE ELECTRONIC CIGARETTES

County Counsel Summary

This ordinance amends Chapter 7.80 to prohibit tobacco retailers or any of the tobacco retailer's agents or employees from selling or possessing with the intent to sell any flavored tobacco products, and single use electronic cigarettes as newly defined by this ordinance. The ordinance's new prohibition concerning flavored tobacco products and single use electronic cigarettes apply to the existing procedures for suspension or revocation of licenses, appeals, and penalties in Chapter 7.80.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and purpose.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. In May 2012, the Monterey County Board of Supervisors adopted Ordinance Number 5200 to add Chapter 7.80 to the Monterey County Code to establish licensing requirements for tobacco retailing within the unincorporated area of Monterey County. The purpose of the ordinance was to reduce illegal sales of tobacco products to minors.

C. Electronic cigarettes, (also called e-cigarettes and/or electronic vaporizers), are battery-operated devices that deliver vapor (sometimes called aerosol) made up of nicotine, flavorings, and other chemicals. These devices were first introduced into the American market in 2007 with shapes and sizes quickly changing over time; providing a sleek and modern look appealing to youth. Many electronic cigarettes have removable cartridges that are filled with liquids that come in a variety of flavors such as mint, fruit and candy that do not smell or taste like regular cigarettes.

D. Youth use of electronic cigarettes is impacted by several factors, including flavoring, nicotine salts, industry marketing and the extent of regulation. Recent market trends show an increase in sales of electronic cigarettes that deliver high levels of nicotine more efficiently and with less irritation, making it easier for young people to initiate use and develop addiction.

E. Of the various types of electronic cigarettes, disposable electronic cigarettes pose the highest potential environmental costs, because they contain e-waste elements similar to those

of reusable electronic cigarettes, but are used only for a predetermined time (about 400 puffs or 20–40 cigarettes’ worth of vapor). When littered or improperly discarded, broken devices can leach heavy metals (including mercury, lead, and bromines), battery acid, and nicotine into the local environment, affecting humans and other organisms.

F. On January 11, 25, and February 8, 2022, the Board of Supervisors discussed the issue and directed staff to draft an ordinance banning the sale of flavored tobacco products and single use electronic cigarettes in order to reduce youth access to tobacco products and ameliorate the effects of single use electronic cigarettes on the environment.

SECTION 2. Section 7.80.010 of the Monterey County Code is amended to read as follows:

A. In promoting the health, safety, and general welfare of its residents, the County has a substantial interest in encouraging compliance with Federal, State, and local laws regulating tobacco sales and use.

B. State law permits local governments to enact ordinances regarding the local licensing of retailers of tobacco and allows for the suspension or revocation of a local license for a violation of any State tobacco control law.

C. This Chapter is adopted to: (1) ensure compliance with business standards and practices of the County; (2) encourage responsible retailing of tobacco; (3) promote the health and welfare of youth by discouraging the commercial exploitation of underage tobacco users; and (4) discourage violations of tobacco-related laws, but not to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or otherwise regulated.

D. This Chapter applies in the unincorporated area of the County of Monterey.

SECTION 3. Section 7.80.020 of the Monterey County Code is amended to read as follows:

For the purpose of this Chapter, the following words and terms shall have the following meaning:

A. “Department” means the Monterey County Health Department.

B. “Drug Paraphernalia” shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that Section may be amended from time to time.

C. “Flavored Tobacco Product” shall mean any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by a consumer either prior to, or during the consumption of, a tobacco product, including but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey or any candy, dessert, alcoholic beverage, herb or spice.

D. "Health Officer" means the Health Officer of the County of Monterey or his or her designee.

E. "License" means a Tobacco Retailer License issued by the County pursuant to this Chapter.

F. "Licensee" means any Proprietor holding a License issued by the County pursuant to this Chapter.

G. "License Fee" means the charge established by resolution of the Board of Supervisors of the County of Monterey, calculated to recover the reasonable regulatory costs of issuing and administering Licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication thereof.

H. "Person" means any natural person, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

I. "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten (10) percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

J. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of Tobacco Products.

K. "Tobacco product" means any substance containing tobacco leaf – including but not limited to cigarettes, cigars, pipe tobacco, hookah, tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco – and any product or formulation of matter containing biologically active amounts of nicotine that is product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

L. "Tobacco Retailer" means any Person who engages in Tobacco Retailing.

M. "Tobacco Retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

N. "Sale," "Sell" or "to Sell" means any transaction where, for any consideration, ownership is transferred from one (1) Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner by any means.

O. "Single Use Electronic Cigarette" means any single-use device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including but not limited to, a single-use e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Single use electronic cigarettes shall not include any product that has been approved by the Food and Drug Administration for sale as a tobacco cessation product or other therapeutic purposes where that product is marketed and sold solely for such approved use.

P. "State" means the State of California.

SECTION 4. Section 7.80.040 of the Monterey County Code is amended to read as follows:

A. No License shall be issued to authorize Tobacco Retailing at other than a fixed business location. It is unlawful for any person to engage in Tobacco Retailing at non-fixed locations. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles are prohibited.

B. No License shall be issued to authorize Tobacco Retailing at a temporary or recurring temporary event. For example, Tobacco Retailing at flea markets and farmers' markets is prohibited.

C. No License shall be issued to authorize Tobacco Retailing at any location for which a License suspension is in effect or during a period of ineligibility following a revocation pursuant to Section 7.80.100.

D. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a License issued, it shall be a violation of this Chapter for a Licensee, or any of the Licensee's agents or employees, to violate any local, State, or Federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

E. No person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another person who appears to be under the age of twenty-seven (27) without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

F. No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

G. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.

1. It should be a rebuttable presumption that a Tobacco Retailer in possession of four (4) or more Flavored Tobacco Products, including, but not limited to,

individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.

2. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, manufacturer, or any employee or agent of a Tobacco Retailer or manufacturer has:

- a. Made a public statement or claim that the Tobacco Product imparts a characterizing flavor;
- b. Used text and/or images on the Tobacco Products' labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a characterizing flavor; or
- c. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a characterizing flavor.

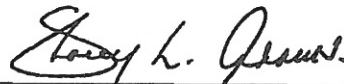
H. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Single Use Electronic Cigarette.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this 15 day of March, 2022, by the following vote:

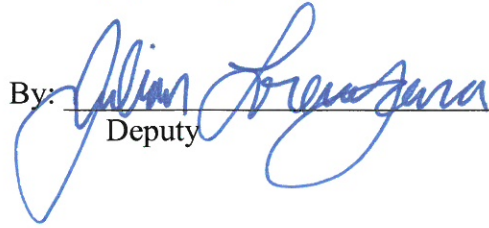
AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None




Chair, Mary Adams
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By:  _____
Deputy

APPROVED AS TO FORM:

KELLY L. DONLON
Chief Deputy County Counsel