

CHAPTER 4.99 - SALES OF FLAVORED TOBACCO PRODUCTS AND PHARMACY SALES OF TOBACCO PRODUCTS PROHIBITED

4.99.010 - Application of chapter.

The provisions of this chapter shall apply within the unincorporated area of San Mateo County, except that this chapter shall not apply to the duty-free retail stores at San Francisco International Airport.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.020 - Definitions.

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

(a)"Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.(b)"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.(c)"Distinguishable" means perceivable by either the sense of smell or taste.(d)"Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.(e)"Labeling" means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.(f)"Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.(g)"Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.(h)"Tobacco product" is defined as set forth in subsection (h) of Section 4.96.030 of Chapter 4.96 of this Ordinance Code.(i)"Tobacco retailer" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products, including but not limited to stores that engage in the retail sale of food items.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.030 - Sale or offer for sale of flavored tobacco products prohibited.

(a)The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.(b)There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.040 - Sale or offer for sale of tobacco products by a pharmacy prohibited.

(a)No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product.(b)No new tobacco retailer permit may be issued to a pharmacy under Chapter 4.98 of this Ordinance Code.(c)No existing tobacco retailer permit issued under Chapter 4.98 of this Ordinance Code may be renewed by a pharmacy.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.050 - Enforcement.

(a)The Health System Chief, or his or her designee, may enforce this chapter by suspension of a tobacco retailer's permit and/or imposition of administrative fines following the procedures and amounts set forth in Sections 4.98.150 and 4.98.160 of Chapter 4.98 of this Ordinance Code.(b)Violations of this chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.(c)This section shall not be interpreted to limit the applicable civil or administrative remedies available under law.(d)The Health System Chief may adopt administrative rules, regulations, or guidelines for the implementation and enforcement of this chapter.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.060 - Public nuisance.

Any violation of this ordinance is hereby declared a public nuisance.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.070 - No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

(Ord. No. 04799, § 2, 6-19-2018)

4.99.080 - Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 4.99, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The Board of Supervisors hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.

(Ord. No. 04799, § 2, 6-19-2018)