

HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL **46 (2023), CD2, FD1**

A BILL FOR AN ORDINANCE

RELATING TO FLAVORED TOBACCO PRODUCTS.

BE IT ORDAINED by the People of the City and County of Honolulu:

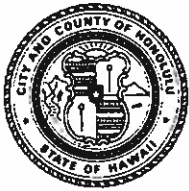
SECTION 1. Purpose and findings. The purpose of this ordinance is to define and prohibit the sale of flavored tobacco products within the City and County of Honolulu.

The escalating use of electronic smoking devices, commonly known as "vapes," has led to a significant rise in youth nicotine addiction. A 2019 State of Hawai'i Department of Health study revealed that over 30 percent of high school students in Hawai'i regularly use electronic smoking devices. These devices have been linked to severe lung disease, potential harm to brain development, and acute nicotine poisoning.

Act 206, Session Laws of Hawaii 2018 ("Act 206"), declared the sale of cigarettes, tobacco products, and electronic smoking devices a matter of statewide concern, and nullified any existing local ordinances or policies that restricted the sale of these products. The tobacco industry has historically used preemption as a tactic to prevent local governments from adopting stronger tobacco control measures, thereby protecting its interests at the expense of public health.

According to the American Academy of Pediatrics, across a range of tobacco products, flavorings are one of the main reasons that youth initiate tobacco use. More than 80 percent of adolescents and young adults who have tried tobacco report that their first product was flavored. When asked why they use tobacco, young people consistently say it is because they like the flavors. E-cigarette solutions are often flavored, with thousands of unique flavors advertised. The 2016 Surgeon General's report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults. In 2021, flavored e-liquids were used by 84.7 percent of youth who reported current e-cigarette use.

Flavorings (other than menthol) have been banned in conventional cigarettes since the Family Smoking Prevention and Tobacco Control Act of 2009 because flavorings encourage cigarette experimentation and regular use, which can lead to tobacco use disorder. The cigarette flavor ban appears to be working, as it has been associated with a 58 percent decrease in the number of cigarettes smoked among youth and a 17 percent decrease in the likelihood of smoking cigarettes overall in this age group. However, these effects are likely diminished by the continued availability of menthol cigarettes and other flavored tobacco and nicotine products. Small cigars, e-



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cigarettes, and similar devices often contain flavors, but are not subject to the same regulations as cigarettes. To fully protect youth from the harms of tobacco, it is necessary to prohibit all flavor ingredients, including menthol, in all tobacco and nicotine products. Emerging evidence suggests that focusing on "characterizing" flavors rather than any flavor ingredient creates potential policy loopholes that are exploited by tobacco companies to circumvent tobacco flavor bans. Tobacco companies have historically used flavored products to target youth and, in particular, youth from communities that have experienced high levels of discrimination and stigma; for example, the targeting of Black communities with menthol cigarette advertising and promotions. Thus, prohibiting all flavors in all tobacco and nicotine products is a policy approach that promotes social justice and racial equity.

The City Council finds that the detrimental health effects and the addictive nature of these products necessitate a comprehensive approach to regulate their sale and distribution. It is therefore proposed that a trigger ban on flavored tobacco products be implemented to protect public health, particularly the health of our youth, and to prevent the further spread of nicotine addiction. While the preemption of the counties regulating the sale of tobacco has not yet been overturned, this ordinance will initiate a trigger ban on flavored tobacco products should Act 206 be overturned or suspended.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 2021 ("Public Health and Safety"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"ARTICLE __: PROHIBITION OF FLAVORED TOBACCO PRODUCTS

§ 41-__.1 Definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning:

E-Liquid or Electronic Liquid. Any liquid or like substance, which may or may not contain nicotine, that is designed or intended to be used in an electronic smoking device, whether or not packaged in a cartridge or other container. The term does not include prescription drugs; cannabis for medical use pursuant to HRS Chapter 329 or manufactured cannabis products pursuant to HRS Chapter 329D; or medical devices used to aerosolize, inhale, or ingest prescription drugs, including manufactured cannabis products manufactured or distributed in accordance with HRS § 329D-10(a).



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Electronic Smoking Device. Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic pipe, vape pen, or electronic hookah. The term includes any component, part, or accessory of the device, and also includes any e-liquid that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. The term does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Flavored Tobacco Product. Any tobacco product that imparts:

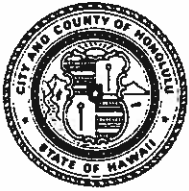
- (1) A taste or smell, or both, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, including but not limited to any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice; or
- (2) A cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

Hookah. A type of waterpipe, used to smoke shisha tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses. This term does not include an e-hookah or other electronic smoking devices.

Labeling. Written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

Loose Leaf Tobacco. Cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

Packaging. 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.



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Premium Cigar. Any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, has a wholesale price of \$6 or more, and weighs more than 4 pounds per 1,000 cigars. A premium cigar does not have a filter, tip, or non-tobacco mouthpiece and is capped by hand.

Retailer. An entity that sells, offers for sale, or exchanges or offers to exchange tobacco products to consumers for any form of consideration. The term includes an owner or agent of a tobacco retail location.

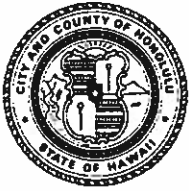
Shisha Tobacco Product. A tobacco product smoked or intended to be smoked in a hookah. The term includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. The term does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

Tobacco Product. Any nicotine product and any product made or derived from tobacco that contains nicotine or other substances and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, cigar, chewing tobacco, snuff, snus, any electronic smoking device and any e-liquid that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and any component, part, or accessory of a cigarette, cigar, chewing tobacco, snuff, snus, or electronic smoking device, whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, or flavor enhancers. The term does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Tobacco Retail Location. Any premises where tobacco products are sold or distributed to a consumer, including but not limited to any store, bar, lounge, cafe, stand, outlet, vehicle, cart, location, vending machine, or structure.

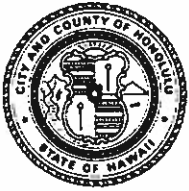
§ 41-__2 Prohibition.

- (a) It is unlawful for any retailer to:
- (1) Sell or offer for sale a flavored tobacco product;



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- (2) Display, market, or advertise for sale in the city a flavored tobacco product; or
 - (3) Mislabel as nicotine-free, or sell or market for sale as nicotine-free, an e-liquid product that contains nicotine.
- (b) *Presumption of flavor.* Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. There is 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:
- (1) Has made or makes a public statement or claim that the tobacco product is a flavored tobacco product;
 - (2) Has used or uses text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product has a flavor other than tobacco, to make a public statement or claim that the tobacco product is a flavored tobacco product;
 - (3) Has taken or takes action directed at consumers that would be reasonably expected to cause consumers to believe the tobacco product is a flavored tobacco product; or
 - (4) Has made or makes a public statement or claim that a product has a minty or cooling effect, such as describing the product as "chill," "ice," "fresh," "arctic," or "frost."
- (c) Any flavored tobacco product found in a retailer's possession that violates this section may be considered contraband, seized by an inspector, or subject to immediate destruction or disposal by the retailer in accordance with the Hawaii Administrative Rules. The cost of proper disposal of electronic smoking devices and e-liquids as hazardous waste pursuant to the Hawaii Administrative Rules must be borne by the retailer.
- (d) *Exceptions.* This section does not apply to the sale, display, marketing, or advertisement of:



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- (1) Premium cigars;
- (2) Loose leaf tobacco; and
- (3) Only shisha tobacco products that are sold in retail tobacco stores as defined in HRS § 328J-1.

§ 41-__3 Administrative penalty.

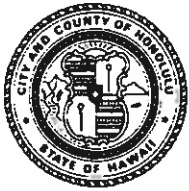
Any retailer found to have violated this article shall be subject to the following, after reasonable notice and an opportunity for a hearing:

- (1) *For the initial violation.*
 - (A) The retailer is responsible to pay an administrative fine of \$1,000; and
 - (B) The retailer is responsible to pay an administrative fine of \$2,000 for each day in which the violation persists beyond the date of the initial violation.
- (2) *For a recurring violation.*
 - (A) The retailer is responsible to pay an administrative fine of \$2,000; and
 - (B) The retailer is responsible to pay an administrative fine of \$5,000 for each day in which the violation persists beyond the date of the recurring violation.

§ 41-__4 Severability.

If any provision of this article or its application thereof to any person or circumstance is held invalid, such invalidity does not affect the validity or enforceability of the remaining provisions, or their application to other persons or circumstances. The remaining provisions will be given effect to the maximum extent possible."

SECTION 3. This ordinance takes effect 42 days after the day on which the State of Hawai'i preemption of county ordinances on the sale of tobacco products is officially repealed or suspended; provided that:



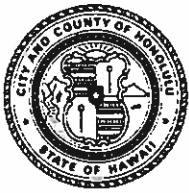
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1. If the 42nd day after the day of the repeal or suspension of the preemption occurs on a weekend or holiday, then this ordinance takes effect on the next business day following the 42nd day.



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2. Upon the effective date of this ordinance, the Corporation Counsel is hereby directed to notify the City Council, the Mayor, and the Managing Director. Once such notification is received, the City Clerk is directed to post the effective date of this ordinance on the City and County of Honolulu's official website and other public notice platforms.

INTRODUCED BY:

Tommy Waters

Matt Weyer

DATE OF INTRODUCTION:

August 2, 2023

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu