



Tobacco Retail License Program Frequently Asked Questions



1. Why was the Tobacco Retail License Ordinance passed in Fremont?

The [Tobacco Retail License Ordinance](#) was passed: 1) to ensure that retailers comply with tobacco control laws to protect the health, safety, and welfare of the Fremont community, and 2) to limit youth access to tobacco products.

As a result of targeted industry marketing strategies, flavored tobacco products are marketed to youth and young adults, helping to establish tobacco habits that can lead to long-term addiction. Reducing youth exposure to these products will counteract this targeting.

2. What are the new restrictions associated with this new ordinance?

- **Any retailer who sells tobacco products needs to acquire an annual Tobacco Retail License from the City of Fremont.**
- **The sale of flavored tobacco products, including menthol cigarettes, is prohibited.**
Flavored tobacco products can include, but are not limited to, flavored: cigarettes, cigars, cigarillos, little cigars, Swishers, chewing tobacco, pipe tobacco, snuff, hookah, e-cigarette cartridges, e-juice, JUUL pods, and other flavored components for vaporizers.
- **Retailers must sell cigarettes in packs of twenty (20). The sale of a pack of twenty (20) cigarettes for less than eight dollars (\$8) is prohibited.**
Retailers may not sell cigarettes in a pack with less than twenty (20) cigarettes.
Retailers may not sell cigarette packs for less than 8 dollars (\$8), including all applicable taxes.
- **The sale of single cigars for less than five dollars (\$5) is prohibited.**
Retailers may not sell single cigars for less than 5 dollars (\$5), including all applicable taxes.

- **Retailers must sell cigars, at a minimum, in packs of five (5). The sale of a pack of five (5) cigars for less than eight dollars (\$8) is prohibited.**

Retailers may not sell cigars in a pack with less than five (5) cigars. Retailers may not sell cigar packs for less than eight dollars (\$8) per pack.

Retailers are still permitted to sell pipes, hookahs, vaporizers, and e-cigarettes.

3. What is a flavored tobacco product?

A flavored tobacco product is any tobacco product which contains an ingredient that imparts a characterizing flavor.

4. What is a characterizing flavor?

A characterizing flavor is a taste or aroma other than the taste or aroma of tobacco. Examples of characterizing flavor include:

- Menthol, mint, and wintergreen
- Fruit flavors such as grape, cherry, mango, and watermelon
- Candy flavors such as chocolate, vanilla, cotton candy, bubble gum, and licorice
- Alcohol flavors such as wine, apple martini, piña colada, rum, and cognac
- Spice flavors such as clove and cinnamon

There are many other flavors not listed here such as honey, cream, coffee, cocoa, herbs, and desserts.

5. When does the ordinance go into effect?

The ordinance went into effect November 8, 2019. However, Tobacco Retail License applications are not due until January 1, 2020, and enforcement regarding compliance of the new regulations will begin at the end of December 2019. The application is available on the City of Fremont's webpage: www.Fremont.gov/TobaccoRetailLicense.

6. Who is considered a tobacco retailer?

A tobacco retailer is any person or business that sells, offers for sale or distribution, exchanges, or offers to exchange for any form of consideration tobacco, tobacco products (see Question #7), or tobacco paraphernalia (see Question #8). Tobacco retailers must also be in

possession of a California State Cigarette and Tobacco License in order to sell tobacco products in the state. No tobacco sales are permitted from mobile vending (see Definitions at the end of this document) or pharmacies. Current electronic cigarette retailers are also considered a tobacco retailer under the new ordinance and must apply for a local Tobacco Retail License.

7. What are considered tobacco products?

A tobacco product includes any product containing, made, or derived from tobacco or nicotine intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff. It also includes any electronic device that delivers nicotine or other substances to the person inhaling from the device including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. A tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

8. What is tobacco paraphernalia?

Tobacco paraphernalia includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the consumption, use, or preparation of tobacco products.

9. What about hookah lounges?

Hookah lounges are required to obtain a Tobacco Retail License. Hookah lounges cannot sell, dispense, or otherwise offer customers flavored tobacco products even if they are grandfathered in and have a permit to be a hookah lounge.

10. How do retailers obtain a Tobacco Retail License?

The information on how to obtain a license is available on the City of Fremont's webpage: www.Fremont.gov/TobaccoRetailLicense. Retailers must submit their application by January 1, 2020 in order to be in compliance. By providing a valid email address, retailers will receive an electronic confirmation of receipt for their records.

11. Is there a fee to apply for a Tobacco Retail License?

No. There is no fee required to obtain a license. The City is currently using existing resources to administer and enforce the program.

12. How does a Tobacco Retail License work?

Tobacco retailers in Fremont are required to submit an application for a Tobacco Retail License and meet ordinance requirements to obtain and maintain a license. The application is available at www.Fremont.gov/TobaccoRetailLicense.

13. What about other cities that do not have similar regulations?

Over 150 California municipalities have passed Tobacco Retail License requirements with a flavored tobacco product ban policy. Fremont's new regulations will make it more difficult for youth in Fremont to access harmful products.

14. What is the difference between the State license and this license?

The California State license is intended to prevent retailers from avoiding tax and selling unregulated tobacco products. Fremont's license will not supplant California's required tobacco license. Unlike the State license, a local license supports local compliance and enforcement checks of youth access laws and local tobacco laws.

15. What is the minimum age to purchase tobacco products? What about kids who purchase products online?

In 2016, the Stop Tobacco Access to Kids Enforcement (STAKE) Act raised the legal minimum age of purchase for tobacco products from 18 to 21. The law provides that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local government ordinances requiring a more restrictive legal age to purchase or possess tobacco.

The City Tobacco Retail License references "minimum age established by state law." The minimum age to purchase tobacco in Fremont is 21 to comply with the new state requirements.

In September 2019, California signed into law Senate Bill 39 which prohibits the sale, distribution, or non-sale distribution of tobacco products, as defined, directly or indirectly to

any person under 21 years of age through the United States Postal Service or through any other public or private postal or package delivery service. This bill additionally requires sellers, distributors, and non-sale distributors to deliver tobacco products only in conspicuously marked containers, as specified, and to obtain the signature of a person 21 years of age or older before delivering a tobacco product. The bill allows a person to designate an address for delivery that is different from the person's mailing or billing address if the person's mailing or billing address has been verified in accordance with specified provisions. Likewise, Fremont's new law requires sellers to positively identify the age of buyers, effectively banning customary online sales of all tobacco products in the city.

16. What will happen if a retailer is cited for a license violation during an inspection?

Violations are subject to administrative fines and license suspension and/or revocation. Violations may also be subject to a civil action brought by the City of Fremont, including suits for injunctive relief, which may also be punishable by fines. Criminal prosecution may also be sought for violations.

17. How long is the Tobacco Retail License effective?

The term of the license is one (1) year. Each license must be renewed annually by January 1. Each tobacco retailer needs to apply for renewal of the Tobacco Retail License no later than thirty (30) days before the expiration date of the license.

Tobacco retailers may be notified annually prior to the expiration of their license to prompt them to renew, which will be facilitated through the completion of an Annual Renewal Application available on the City's webpage: www.Fremont.gov/TobaccoRetailLicense.

18. What happens if a retailer wants to sell their business? Is their Tobacco Retail License transferrable to potential new owners?

No. A Tobacco Retail License may not be transferred from one person to another or from one location to another. A new license is required whenever a tobacco retailing location has a change in proprietor(s). (See [Ordinance Sec. 8.75.160](#), License nontransferable.)

19. What does it mean for a business if they cannot obtain a Tobacco Retail License?

A Tobacco Retail License is not the same as a business license. Retailers that do not have a Tobacco Retail License may still operate their business, but will not be able to sell tobacco products.

20. What should a retailer do if they have multiple tobacco retailing locations?

Each location in Fremont that sells tobacco products and/or tobacco paraphernalia must have its own Tobacco Retail License.

21. Is there an appeal process?

There is a process in place to appeal a denial, suspension, or revocation of a Tobacco Retail License and to appeal the imposition of administrative fines.

Definitions of Terms

Flavored Tobacco Product:

A flavored tobacco product is any tobacco product which contains an ingredient that imparts a characterizing flavor. A characterizing flavor is a taste or aroma other than the taste or aroma of tobacco.

Mobile Vending:

No license may be issued to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

Tobacco Retailer:

Any tobacco retailer for which the principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: twenty percent (20%) or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both; or 60 percent (60%) or more of gross sales receipts are derived from the sale or exchange of tobacco products, tobacco paraphernalia, or both; or fifty percent (50%) or more of completed sales transactions include tobacco products or tobacco paraphernalia.

Tobacco Paraphernalia:

Any item designed for the consumption, use, or preparation of tobacco products.

Tobacco Product:

(1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, tobacco product includes any component, part, or accessory of a tobacco product, whether or not sold separately. Tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

More Information

For more information on the City of Fremont Tobacco Retail License program, please visit www.Fremont.gov/TobaccoRetailLicense or contact Code Enforcement at 510-494-4430 or code_enf@fremont.gov.