

Proposed Language for Tempe, Arizona- Establishing a Tobacco Retail License, including enforcement, and Ending the Sale of Flavored Tobacco Products

Suggested section to add language: City Code, Chapter 22, Article II, Division 2 (“Regulation of Tobacco Products”)

Suggested city departments to enforce and implement due to no city health department:
Licensing - Financial Services Department, specifically Tax and License Enforcement - Human Services Department

1. Definitions

Sell or Sale means to furnish, give, provide, sell, or to attempt to do so, whether gratuitously or for any type of compensation.

Electronic smoking device means 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 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Flavored tobacco product means any tobacco product that contains a taste or smell, 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, or any candy, dessert, alcoholic beverage, herb, or spice.

Person means any natural person.

Self-service display means any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer’s agent or employee. A vending machine is a form of self-service display.

Tobacco product means:

(1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
(3) any component, part, or accessory of (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Tobacco retail establishment means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

Tobacco retailer means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the nonmanagement employees of any tobacco retail establishment.

44-2 License Required

- A. Each tobacco retailer engaging in the sale of tobacco products, at each location in this City, shall secure, and display at all times, a tobacco retail sales license from the [Issuing Authority] before engaging or continuing to engage in such business. No tobacco retailer may sell tobacco products without a valid tobacco retail sales license.
- B. The fee for a tobacco retail sales license shall be set by the [Issuing Authority] and used to cover the administrative cost for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the cost of the regulatory program authorized beyond this ordinance.
- C. Such license shall be renewed annually and valid for a period beginning with the date of license to the first day of January next succeeding the date of the license unless sooner revoked as allowed by penalties in this article, or unless the retailer to whom it was issued discontinues business, in either of which cases the holder of the license shall immediately return it to the [Issuing Authority]. A license shall not be transferred from one retailer to another or from one location to another.
- D. A tobacco retail sales license cannot be renewed if the tobacco retailer has outstanding fines pursuant to this ordinance.

- E. No tobacco retail sales license shall be issued or renewed unless the tobacco retailer signs a form stating that the tobacco retailer has read this ordinance and has provided training to all employees on the sale of tobacco products. Such training shall include information about the illegal sale of tobacco products (e.g. flavored tobacco products and underage sales to persons under 21 years of age), the types of identification legally acceptable for proof of age, and that illegal sales shall subject the tobacco retailer to penalties.
- F. Any business found to be selling tobacco products without a license shall be issued a No Sales Order for Tobacco Products and be ineligible to receive a tobacco retail license for a period of three (3) years.

44-3 Flavored Tobacco

No tobacco retailer shall sell or offer for sale any flavored tobacco product, or display, market, or advertise for sale in this City any flavored tobacco product.

PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

44-4 Self-Service Displays

No tobacco retailer or their employee or agent shall sell or otherwise distribute tobacco products by or from a self-service display except in tobacco retail establishments where persons under the age of 21 are not permitted access at any time.

44-5 Signage

No tobacco retailer shall sell, permit the sale of, or distribute tobacco products in the City unless a notice is posted at any location where tobacco products are available for purchase. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six feet of each register where tobacco products are available for purchase. The [Issuing Authority] shall provide this notice, which shall state "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES." The notice must be at least 14" by 11" and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.

44-6 Education

The [Health Department/Issuing Authority] shall engage in a continuing public health education program to explain and clarify the purposes and requirements of this ordinance to persons affected by it, and to guide tobacco retailers and their agents or employees in their compliance. The program may include publication of a brochure for affected tobacco retailers explaining the provisions of this ordinance and signage mandated by this ordinance.

44-7 Enforcement

The tobacco retailer shall be subject to at least two unannounced compliance checks per year. The [Health Department/Designated Authority] shall conduct compliance checks to determine compliance with this ordinance, including by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this ordinance. The results of all compliance checks shall be published by the [Health Department/Issuing Authority] at least annually and made available to the public upon request.

City law enforcement shall not enforce A.R.S. § 13-3622(B) or (C) and possession of tobacco products does not constitute cause for city law enforcement to initiate contact with an individual regardless of that person's age.

44-8 Penalties

- A. *Tobacco retailers.* Any tobacco retailer found to have violated this ordinance in person, by agent, representative, or employee or in any other way shall be subject to:
- (1) For a first violation, a fine no less than \$500;
 - (2) For a second violation within a 36-month period, a fine no less than \$750 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of seven days;
 - (3) For a third violation within a 36-month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of 30 days;
 - (4) For a fourth and any subsequent violations within a 36-month period, a fine no less than \$1,000 and the tobacco retailer shall have license revoked.
- B. *Related violations.* A violation of any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products is also a violation of

this ordinance. In addition to any other penalty, a tobacco retailer who violates any provision of this ordinance or any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products, shall be subject to penalties stated in this ordinance, including fines and a prohibition of the sale on of tobacco products.

44-9 Exceptions and Defenses

- A. The penalties in this ordinance do not apply to a person younger than 21 years old who purchases, uses, possesses, or attempts to purchase tobacco products.
- B. Nothing in this ordinance prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- C. It shall be an affirmative defense to a violation of this ordinance for a tobacco retailer or their agent or employee to have reasonably relied on proof of age as described by state law.

44-10 Liberal Construction

This ordinance shall be liberally construed so as to further its purposes.

44-11 Severability

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this ordinance is severable.

44-12 Effective Date

This ordinance shall take effect on [effective date].