



FREQUENTLY ASKED QUESTIONS

In May 2024, Emeryville City Council adopted Tobacco Retail Licensing (TRL) Ordinance No. 24-005 which must be followed by all tobacco retailers in the city starting August 5, 2024. The TRL Ordinance will: (1) require every tobacco retailer in Emeryville to obtain and maintain a valid city tobacco retail license, and (2) require Emeryville tobacco retailers to follow new regulations on the sale of tobacco products. Below are answers to common questions that may help you comply with the requirements of this new law:

1. What regulations are associated with Emeryville's tobacco sales law?

- **The sale of all flavored tobacco products is prohibited at all tobacco retailers in Emeryville, without exemption.** Flavored tobacco products include, but are not limited to, flavored: cigarettes, cigars, little cigars, cigarillos, cigar/blunt wraps, chewing tobacco, pipe tobacco, snuff, snus, hookah, nicotine pouches, e-cigarettes, e-juice, and all other flavored electronic smoking devices.
- **The sale of all electronic smoking devices is prohibited.** Retailers are prohibited from selling any electronic smoking devices. This includes but is not limited to: vapes, e-cigarettes, e-hookahs and other vaping devices, as well as any component, part, or accessory of the device, including e-liquids and e-pods, whether they are flavored or unflavored, and whether or not they contain nicotine.
- **The sale of cigar products (including cigars, cigarillos, little cigars, blunts, blunt/cigar wraps) is prohibited in package sizes less than twenty (20) and priced under ten dollars (\$10.00), except for single cigars priced at ten dollars (\$10.00) or more.** Retailers must sell cigar products in packages of twenty (20) or more, priced at or above ten dollars (\$10.00), including all applicable taxes and fees. Single cigars are only permitted for sale if priced at or above ten dollars (\$10.00), including all applicable taxes and fees.
- **Cigarettes in packages of 20 are prohibited to sell for less than ten dollars (\$10.00).** Retailers must sell cigarette packages priced at or above ten dollars (\$10.00), including all applicable taxes and fees.
- **The price of each tobacco product offered for sale must be clearly and conspicuously displayed.** Tobacco products displayed for sale must be clearly labeled with the appropriate price.
- **The honoring or redemption of discounts or coupons is prohibited for any tobacco product.** Retailers must sell all tobacco products for at least their full retail price.
- **The sale of tobacco products is prohibited in pharmacies.** No tobacco products can be sold in pharmacies, whether they are flavored or unflavored.
- **The sale of tobacco products is prohibited within 500 feet of existing tobacco retail locations and within 1,000 feet of Youth-Oriented Facilities (including schools, libraries, playgrounds, youth centers, recreation facilities, parks and licensed child-care facilities).** TRLs in these locations are non-transferable to new owners. This distance requirement does not apply to existing tobacco retailers operating lawfully on the operative date of 8/5/24, as long as all ordinance conditions are met.

2. Why were these regulations passed?

These regulations were passed to protect the health and safety of Emeryville residents, to limit youth access to harmful tobacco products, and to encourage responsible tobacco retailing.

3. Do I need both a local and state tobacco retail license (TRL) to sell tobacco?

Yes, all tobacco retailers in Emeryville are now required annually to obtain and maintain a valid local TRL, in addition to a state TRL, in order to sell tobacco. Both licenses must be prominently displayed in a publicly visible place at the licensed location.

4. How do I obtain a city tobacco retailer license?

The city is currently in the process of developing a Tobacco Retailer License application and another letter will be sent once the application is finalized.

5. What is a “flavored tobacco product?”

A “flavored tobacco product” means any tobacco product that:

- Imparts a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to, tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
- Imparts a heating, cooling, or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product; or
- Is prohibited under California Health & Safety Code section 104559.5(b)(2), which states that a tobacco product is presumed to be flavored if a manufacturer or any of the manufacturer’s agents or employees, 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, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

6. How is “tobacco product” defined in this ordinance?

- Any product, whether natural or synthetic, 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, and snuff.
- Also includes any component, part, or accessory of a tobacco product, whether or not sold separately.
- Excludes 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.

7. What if I am not sure if a tobacco product is flavored?

Many tobacco products have labels that do not clearly specify whether a product is flavored. However, most tobacco products are described on the internet. For example, a brand of “Pink” cigar wraps is described on a tobacco retailer website as having a “fruit berry” flavor. As another example, a brand of “Royal Haze” cigarillos is described on a tobacco retailer website as having a “grape and honey” flavor. Please note that tobacco distributors may not always be aware what tobacco products Emeryville deems as flavored tobacco, per TRL requirements. If you are unsure whether a tobacco product is flavored, please contact Nicole Ewing at Nicole.Ewing@emeryville.org with any questions.

8. Can I sell products that add flavor to tobacco products, but do not contain tobacco or nicotine?

No. Emeryville’s TRL ordinance does not permit the sale of any flavored component, part, or accessory of a tobacco product, whether or not sold separately. In addition, California’s flavored tobacco law SB793 prohibits the sale of tobacco product flavor enhancers which are products intended to produce a characterizing flavor when added to a tobacco product.

9. Does California’s flavored tobacco law (SB793) affect local ordinance requirements?

Emeryville’s flavored tobacco sales regulation is stronger than state law, and prohibits the sale of all flavored tobacco products without exemption. Per Emeryville’s TRL ordinance, no flavored tobacco products are permitted for sale in the City of Emeryville.

10. Am I permitted to sell flavored tobacco products online?

No. Emeryville’s TRL ordinance requires that all sales of tobacco products be conducted on-site and in-person in a licensed tobacco retail location. The delivery sale of tobacco products is prohibited, which includes the sale of tobacco products by telephone, mail, internet, or app-based service, or delivery by the retailer or third parties, including curbside pick-up.

In addition, Alameda County case law determined that California’s flavored tobacco law SB793 prohibits the sale of flavored tobacco products via online retailing, in addition to sales at in-person retail establishments. For more information, please refer to:
<https://tinyurl.com/ACDAOnlineFlavoredTobaccoSales>.

11. How is “Electronic Smoking Device” defined in this ordinance?

“Electronic smoking device” means an electronic 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 including any component, part, or accessory of the device and any substance that may be aerosolized or vaporized by such a device, whether or not the substance contains nicotine. “Electronic smoking device” does not include drugs, devices, or combination of products authorized for sale by the U.S. Food and Drug Administration, or Cannabis or Cannabis product as defined in Emeryville’s Municipal Code.

12. Does Emeryville's TRL ordinance prohibit the sale of cannabis vaping devices?

No. Emeryville's regulation that prohibits the sale of Electronic Smoking Devices does not apply to cannabis products. The city regulates the sale of cannabis products separately. Please note that California state law requires cannabis products to be sold at licensed cannabis locations, and tobacco retailing is not authorized at locations licensed for commercial cannabis activity.

13. Emeryville's TRL ordinance requires cigar products (i.e. cigars, cigarillos, little cigars, blunts, blunt/cigar wraps, etc.) to be sold in packages of at least 20, but my products come in smaller quantities. How can I meet the TRL minimum package size requirements?

Retailers must sell products to customers that meet minimum package size requirements regardless of the package size sold to the retailer. For example, ten 2-packs or four 5-packs of little cigars / cigarillos (totaling 20 little cigars / cigarillos) can be sold together for a minimum of \$10.00 to meet minimum package size requirements, as long as the price of those combined packages offered for sale is clearly and conspicuously displayed on the shelf.

14. When will this law be enforceable?

Tobacco retailers must fully comply with Emeryville's TRL ordinance provisions by August 5, 2024.

15. What are the penalties, per Emeryville's TRL ordinance, if I violate this law?

- A first TRL violation within any sixty (60) month period will be subject to a 30-day license suspension and an administrative fine of \$100;
- A second violation within any sixty (60) month period will be subject to a 90-day license suspension, and a \$200 fine if it occurs within five (5) years of the first violation;
- A third violation within any sixty (60) month period will be subject to a one (1) year license suspension, and a \$500 fine if it occurs within five (5) years of the second violation;
- Four or more violations within any sixty (60) month period will be subject to license revocation and no new license issued to the location until five (5) years have passed from the date of revocation.

16. Will my tobacco retail license (TRL) be transferred to the new owner if I sell my store?

No, a TRL may not be transferred from one person to another or from one location to another. A new TRL is required whenever a tobacco retailing location has a change in proprietor(s). Please note that TRLs will not be issued to new tobacco retailers located within 1,000 feet of youth-oriented facilities or 500 feet of existing tobacco retailers; TRLs in these locations are non-transferable to new owners.

17. Will tobacco retailers need to pay a fee to obtain or renew a city tobacco retail license?

Yes, a fee will be established to cover the city's costs to administer and enforce the TRL program. The fee will be determined by the city and will need to be paid annually by tobacco retailers in order to obtain or renew their tobacco retail license. Tobacco retailers will be notified once this fee is set.

18. Who can I contact for more information?

For more information, please contact Emeryville Code Enforcement Officer Nicole Ewing at Nicole.Ewing@emeryville.org.