



ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT

Colleen Chawla, Director
Kimi Watkins-Tartt, Interim Director

Tobacco Control Program
1000 Broadway, 5th Floor
Oakland, CA 94607

Paul Cummings, Director
(510) 268-4150
FAX: (510) 268-7012

Oakland Flavored Tobacco Ordinance – Implementation Challenges

On July 1, 2018, Oakland’s revised Tobacco Retail License Ordinance went into effect, restricting the sale of flavored tobacco to adult-only tobacco stores. To-date, spot checks show that merchants are largely complying with the new law by removing flavored tobacco products, including menthol cigarettes, from their shelves, which is helping to reduce access to flavored tobacco products among youth and other vulnerable populations.

However, the exemption in Oakland’s law, allowing adult-only tobacco stores to continue selling flavored tobacco, has been very challenging for enforcement officials to implement, as some retailers are changing their business models or working around loopholes in the definition of “tobacco store” (see note with definition below) in order to meet the eligibility requirements for the exemption.

For example:

- Given the requirement that a tobacco store must generate over 60% annual gross revenue from the sale of tobacco products:
 - Some merchants are shifting their product make-up by increasing their volume of tobacco products for sale and decreasing stocks of non-tobacco products.
 - Some merchants, such as food markets, are investing large sums of money to build in-store adult-only structures, or rooms with separate entrances, which they aim to operate independently of the primary store.
 - Some merchants, such as gas stations, are attempting to divide their existing properties, and products, into two stores to allow for the sale of flavored tobacco products in one.
- While merchants are required to sign an affidavit stating that their store qualifies to meet all adult-only tobacco store requirements, it is difficult for enforcement staff to determine and validate the percent of a store’s annual revenue based on financial records provided.
- The burden of proof is on the city to determine whether a given store qualifies for the exemption.
- To determine whether a tobacco store license was issued by the city in error, a challenge would need to be initiated by complaint and considered in a hearing.
- Many merchants in the city have vocalized objection to the tobacco store exemption – they feel that it is an unfair business practice that certain stores can sell flavored tobacco while others cannot, and would prefer an even playing field (citywide restrictions).
- The exemption requirement to “primarily sell tobacco products” is subjective.
- What began as a handful of adult-only tobacco stores in Oakland (2-5) prior to the law’s effective date, has now increased post-implementation to approximately 45 adult-only tobacco stores, which are primarily located in certain low-income areas of the city.
- As a result, flavored tobacco and menthol sales are still available and somewhat prevalent, particularly in certain low-income areas of the city, among some of the most vulnerable communities and those most heavily-targeted by tobacco industry marketing.

NOTE: Oakland's definition of "tobacco store" includes retail businesses that meet all of the following requirements:

- Primarily sells tobacco products
- Generates more than 60% of gross revenues annually from the sale of tobacco products
- Does not permit any person under 18 years of age to enter the premises unless accompanied by the person's parent or legal guardian
- Does not sell alcoholic beverages or food for consumption on the premises