

Public Meeting

Flavored Vaping/Youth Tobacco
Ordinance

Oct. 25, 2022



Tempe Coalition

Flavored Commercial Tobacco Products: Putting a New Generation of Tempe Kids at Risk



Oct. 25, 2022



The Toll of Tobacco in Arizona

High school students who smoke: **5.3%**

High school males who smoke cigars: **7.1%**

High school students who use e-cigarettes: **17.9%**

8,300 adults die each year from smoking

115,000 kids alive in state today will ultimately die from smoking (given current smoking levels)



Flavored Tobacco Products are Popular Among Kids



81% of youth who have ever used a tobacco product started with a flavored product

79% of current youth tobacco users used a flavored tobacco product in the past month

Flavored tobacco products: flavored cigars, flavored e-cigarettes, flavored smokeless tobacco, flavored hookah, menthol cigarettes

Localities and States Restrict the Sale of Flavored Tobacco Products

Over 360 localities restrict the sale of flavored tobacco products.

Five states (California, Massachusetts, New Jersey, New York, and Rhode Island) restrict the sale of flavored tobacco products.

“Prohibiting flavors, including menthol, in tobacco products can benefit public health by reducing initiation among young people and promoting cessation among adults.”

-2020 Surgeon General report

Flavored Tobacco Sales Restrictions: Promising Evidence for Reducing Youth Access and Use

Available data indicates that **strong laws can be easily implemented** and can help **reduce youth tobacco access and use** by removing from store shelves the products that are most attractive to youth and that youth use most often.

Robust enforcement, including retailer education, is key to an effective licensing program and can help **ensure that retailers do not sell tobacco products to kids.**

Weak enforcement measures and exemptions reduce compliance and have other unintended consequences.

ONE YEAR PAST DEADLINE FOR FDA ACTION ON E-CIGARETTES WHAT'S STILL ON THE MARKET?

1. E-CIGARETTES AND E-LIQUIDS IN KID-FRIENDLY FLAVORS



2. THE BEST-SELLING & MOST POPULAR BRANDS AMONG KIDS



3. FLAVORED DISPOSABLE E-CIGARETTES



4. MENTHOL FLAVORED E-CIGARETTES



5. FLAVORED SYNTHETIC NICOTINE E-CIGARETTES



Mayor & Council

**Proposed Ordinance to
Regulate the Sale of Tobacco**

Oct. 25, 2022



Tempe

Making waves in the desert

Council Priorities



- **1.21 Youth Alcohol, Marijuana, & Opioid Usage Rate**

Achieve rates of zero for alcohol use and drug misuse by 10th and 12th grade students in Tempe as measured by the biennial Arizona Youth Survey.

- **1.31 Addressing Opioids**

Achieve an end to opioid related deaths and overdoses as measured by the percentage of “opioid abuse probable” Emergency Medical Services calls.



Background

The issue of flavored vaping and youth tobacco use was brought to the city by multiple nonprofits and organizations, including the Tempe Coalition.

Nov. 17, 2021:

- Tempe City Council's Human Services and Community Safety Committee receives direction from the full Council at a Work Study Session to review topic.

Background

June 24, 2022:

- **At a meeting of the HSCS Committee, Councilmembers Doreen Garlid and Joel Navarro reach consensus to recommend discussion on a proposed ordinance be forwarded to the full Council for consideration and public input.**

Aug. 25, 2022:

- **Councilmembers Garlid and Navarro inform full Council about proposed ordinance and Council gives direction to gather public input and hold forums.**

Youth Tobacco



Arizona:

- Cottonwood, Douglas, Flagstaff, Goodyear and Tucson enacted ordinances raising minimum age to 21.

U.S.:

- Arizona is one of only 11 states that have not raised its Minimum Legal Sales Age to 21.

Flavored Vape/Tobacco



Arizona:

- Phoenix proposed an ordinance to end the sale of all flavored tobacco products in January 2021, which did not move forward at that time.

U.S.:

- Five states (Massachusetts, New Jersey, New York, Rhode Island, and California) have enacted flavored vaping bans.
- In 2020, California became 2nd state to prohibit all flavored tobacco products, including menthol cigarettes (implementation pending referendum vote)

Current City of Tempe Provisions

- **Tobacco Retailer as defined in the Zoning & Development Code**
 - **Any person or business who primarily sells or offers for sale tobacco products or tobacco paraphernalia**
 - **In Tempe, Tobacco Retailers shall not be located on a lot within 1,320 feet of a charter, private or public school, which provides elementary or secondary education.**
 - **These current provisions stay in place under the proposed ordinance and tobacco retailers are treated the same for purposes of the new proposed license.**

Unlawful Activities under Proposed Ordinance

- Operating a business that sells tobacco without a valid license issued by the City of Tempe.
- Selling any tobacco product to any person under the age of 21 years old to conform with federal law.
- Selling or offering for sale any flavored tobacco product with delivers aerosolized or vaporized nicotine through the use of an electronic cigarette.
- Continuing the sale of tobacco upon the suspension or revocation of a valid tobacco sales license by the City of Tempe.
- If a license violates any other federal or state law relating to tobacco product sales, is also subject to penalties proscribed in the Section.





Proposed Ordinance:

- Establishes a new Tobacco Sales License
 - Provides for the administration and enforcement of an annual license by the City's Tax & License Division
 - Provides that the Licensing Officer, Police Chief or designee shall render assistance in the enforcement of the ordinance
 - Inspections and/or operations by Patrol, Community Policing Squad, or in partnership with A.G.'s "Counter Strike" program
 - Requires that the license be displayed at the retail establishment
 - Stipulates that a retailer found to be selling tobacco products without a license is ineligible to receive a license for 3 years.



Other Requirements of the License:

- Requires signage be posted at the retail establishment stating, **“NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES.”**
- Providing a signed affidavit that the applicant or licensee will not sell or offer for sale any tobacco product to anyone under the age of 21 and that they will not sell any flavored vaping product.
- The tobacco licensee to provide training and information about not selling flavored vaping products.

Proposed Administration of a Tobacco License:

- Prior to engaging in the sale of tobacco products, establishment shall submit an application for a tobacco sales license.
- This application is submitted to Tax & License along with the applicant's valid and current Transaction Privilege Tax license issued by Arizona Dept. of Revenue.
- Tax & License will establish and charge an annual sales license fee and late fee as needed.
- Tax & License will also establish and assess a reinspection fee if the tobacco sales establishment has been issued a violation.

Renewal of the License:

- If license has not been revoked, it can be renewed annually by Tax & License. The expiration date of the licenses will be December 31st of each year.
- A licensee may not apply for a renewal within one year of a revocation or if they have outstanding fines.
- If license is denied, the licensee shall be notified by certified mail and the cause for the denial shall be set forth in the notice.

Tax & License Enforcement:

Tax & License will:

- Mail a first letter to licensee when a complaint is made for a violation of the ordinance
- Request Tempe PD to investigate as needed
- Mail a second letter disclosing reinspection process and fee if a violation is observed by Tempe PD
- Notify the licensee of their violation and reinspection (plus fee) for any violations after a second letter is mailed including those reported on Tobacco Enforcement Site (AZ TES)



Proposed fees and penalties:

- Tobacco Sales License fee of \$300 to cover administrative, compliance, education and training costs
- Late fee of \$100 for applications submitted after renewal date
- For those found in violation, there is a \$300 reinspection fee

For 1st violation:

- Reinspection fee of \$300; tobacco licensee must attend a tobacco training class and show proof of compliance

For 2nd violation (within a 36-month period):

- Reinspection fee of \$300 and 7-day suspension of tobacco sales license



Proposed fees and penalties (con't):

For 3rd violation (within a 36-month period):

- Revocation of tobacco sales license

If license is revoked:

- Applicant is ineligible for the issuance of a new license for 1 year
- Applicant must pay all fines and be current on their Transaction Privilege Tax License before a new license may be issued
- If establishment is found to be selling tobacco during time of revocation, it will be ineligible for new license for a 3 year period

Appeals:

- Licensee shall receive notice of the appeals process for any denial or suspension or revocation.
- First appeal is to a Hearing Officer designated by the Financial Services Director.
- It is an informal appeal where the licensee may be represented by counsel.
- A written decision shall be issued within 5 business days of the hearing.



Judicial Appeal:

- If the applicant has been denied administratively and all remedies have been exhausted, the applicant may file an action in Maricopa County Superior Court to challenge the validity of the denial or the suspension or revocation.

Exceptions and Defenses:

- Penalties under this subsection do not apply to a person younger than 21 who purchases, uses or attempts to use tobacco products.
- Nothing in the Article prevents the provision of tobacco products to any person as part of an indigenous practice or lawfully recognized religious, spiritual or cultural ceremony.
- It shall be an affirmative defense to a violation for a tobacco licensee to have reasonably relied on proof of age as described by state law.

Additional Code Text Amendments

- Amend Section 22, Division 2. Regulation of Tobacco Products to conform the definitions for *electronic smoking device* or *electronic cigarette* and *tobacco product*

Effective Date:

- This proposed ordinance would be effective on April 1, 2023.

Next steps:

- Public Input Process continues
 - Stakeholder Input
 - Tempe Forum (survey closes on Oct. 30th)
- Council consideration at upcoming Work Study Session
- Formal vote of the ordinance on a Regular Council Agenda
 - Requires two public hearings

For more info, visit: [Tempe.gov/vaping](https://tempe.gov/vaping)

**Tempe Police Department
Enforcement of Proposed
Ordinance on Limiting the Sale of
Flavored Tobacco for E-cigarettes**

Oct. 25, 2022





AZ Tobacco Laws

- You are required to know the laws and ensure that none of your employees sell tobacco to minors.
- You and the employee face fines if the law is broken.
- Tobacco laws are actively enforced.
- You can help minors avoid tobacco addiction and health problems by following the law.

AZ Tobacco Laws cont...



- Sales of tobacco products to minors are prohibited by:
A.R.S. § 13-3622
- Federal regulation:
21 C.F.R. § 1140

Commonly Asked Question



- For Federal regulation: 21 C.F.R. § 1140

Q. Is there a federal carveout (or can states seek a waiver for a carveout) for active-duty military personnel or military veterans ages 18-20?

A. No, the law does not provide any exemptions from the new federal minimum age of 21 for the sale of tobacco products. Retailers in the United States must not sell tobacco products to anyone under the age of 21.

AZ Tobacco Laws cont...



- A.R.S. § 13-3622: Prohibits a person from knowingly selling, giving, or furnishing any tobacco product, cigarette papers or cigar wraps, other paraphernalia, water pipes, or hookahs to a minor.
- Under A.R.S. § 13-305A3a, a business can be held liable for offenses committed under § 13-3622 by its employees while acting within the scope of their employment.

AZ Tobacco Laws cont...



- Individuals who violate A.R.S. § 13-3622 are subject to criminal action for a petty offense punishable by criminal fines up to \$300 per offense.
- Businesses who violate A.R.S. § 13-3622 are subject to criminal action for a petty offense through enterprise liability, with criminal fines up to \$1000 per offense.

Smoke-free Arizona act



- A.R.S. 36-601-01

- No Smoking in Public Places

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats....

Questions



Tempe

Next steps:

- Public Input Process continues
 - Stakeholder Input
 - Tempe Forum (survey closes on Oct. 30th)
- Council consideration at upcoming Work Study Session
- Formal vote of the ordinance on a Regular Council Agenda
 - Requires two public hearings

For more info, visit: [Tempe.gov/vaping](https://tempe.gov/vaping)