

Order 138-21/22
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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17
Re: SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 17-71 and 17-98 of the Portland City Code are hereby amended to read as follows:*

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

Art. I. In General, §§ 17-1--17-14

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Art. V. Regulation of Tobacco, §§ 17-70--17-98

Div. 1. Generally, §§ 17-70--17-80

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Div. 6. Smoking Prohibited in City Parks and Public Grounds
§§17-96-17-98

Div. 7. Sale of Flavored Tobacco Products Prohibited, Sec.
17-98.

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Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Flavored tobacco products means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco,

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. Specifically excluded from this definition are any product(s) containing cannabis, as defined by Chapter [], of this Code, unless these products contain, are made of, or are derived from tobacco or nicotine.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

~~*Tobacco or tobacco product* means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.~~

Tobacco product means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, 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 contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not mean 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.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

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DIVISION 7

Sec. 17-98. Sale of Flavored Tobacco Products Prohibited.

(a) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City of Portland, or display, market, or advertise for sale in the City of Portland, any flavored tobacco product.

(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any individual, corporation, partnership, or other entity that sells tobacco in the City of Portland, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

(c) The City of Portland's Public Health Division Director or his/her/their designee(s) shall have the primary responsibility for enforcement of this section and may conduct random, unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(e) This section shall become effective on June 1, 2022.

~~Sec. 17-98. Reserved.~~