



Staff Report

February 11, 2020

TO: Honorable Mayor and Members of the Town Council
FROM: Sean Rabé, Town Manager
DATE: January 14, 2020
RE: Use and Sale of Vaping and Tobacco Products Ordinance

Recommendation

Adopt Ordinance adding Chapter 7.24 to the Loomis Municipal Code concerning the use and sale of vaping and tobacco products.

Issue Statement and Discussion

The Town Council has held several discussions regarding vaping and tobacco product use among youth. During the discussion regarding vaping and tobacco product use at the December 10, 2019 Council meeting, Council gave direction to Staff to return with an ordinance that banned the sale of all flavored vaping cartridges and electronic cigarette juice (e-juice) and banned the sale of any tobacco products within a 1,000-foot radius of a school or park. Council also directed staff to incorporate administrative citation and diversion program for youth caught with tobacco products. The attached ordinance incorporates that direction.

The Council held first reading at the January 14, 2020 Council meeting.

CEQA Requirements

There are no CEQA implications associated with the recommended action.

Financial and/or Policy Implications

None.

Attachments

- A. Ordinance 283, adding Chapter 7.24 to the Loomis Municipal Code concerning the use and sale of vaping and tobacco products

TOWN OF LOOMIS

ORDINANCE NO. 283

**AN ORDINANCE OF THE TOWN OF LOOMIS, TOWN COUNCIL,
ADDING CHAPTER 7.24 TO THE LOOMIS MUNICIPAL CODE CONCERNING
THE USE AND SALE OF VAPING AND TOBACCO PRODUCTS**

WHEREAS, the Town of Loomis finds vaping is smoking with the aid of an electronic device, e-cigarette, or other vaping device that heats liquid commonly called e-liquid; and.

WHEREAS, vaping may harm users when poisonous metal particles from the heating element wear down, break off, and reach deep into the user's lungs; and

WHEREAS, nearly one in three high school seniors report having tried vaping in the past year; and

WHEREAS, the Center for Disease Control has reported 15% of lung injury cases associated with vaping products are reported in youth and eight in ten lung injury cases linked to vaping are younger than 35 years old; and

WHEREAS, e-liquid commonly contains nicotine, a derivative of tobacco; and

WHEREAS, nicotine is an addictive chemical that alters brain chemistry and exposure to which is habit-forming and can cause difficulty with critical thinking skills, attention, problem solving, memory, depression or anxiety, addiction, and other serious health hazards; and

WHEREAS, state law prohibits the sale or furnishing of tobacco products and other vaping paraphernalia, to persons under 21 years of age, with limited exception; and

WHEREAS, the 2017 California Healthy Kids Survey revealed 22% of 7th graders, 45% of 9th graders, and 55% of 11th graders responded it was easy or fairly easy for them to get tobacco products; and

WHEREAS, experts at the American Heart Association report the flavor of tobacco products play the most critical role of appealing to youth smoking initiation; and

WHEREAS, flavoring is used to mask the smell and taste of nicotine in e-liquid and may contain diacetyl, a chemical linked to serious lung disease; and

WHEREAS, manufacturers offer many kid-oriented flavored e-liquids, including names and flavors like bubblegum, Captain Crunch, cotton candy, Gummy Bear, watermelon twist, and unicorn-themed names; and

WHEREAS, strict enforcement of policies prohibiting retail sales of tobacco products to minors in commercial settings can limit their opportunities to obtain these products; and

WHEREAS, California courts have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law (see, e.g., *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383); and

WHEREAS, distancing tobacco retailers from places that minors frequent limits minors' access to tobacco products and limits tobacco retailers potential for violation of state law; and

WHEREAS, it is the purpose and intent of this ordinance to protect the public health, safety, and welfare and to discourage violations of law by limiting access to tobacco products near parks and schools and limiting access to tobacco and flavored e-liquid within the town.

NOW THEREFORE, THE TOWN OF LOOMIS, TOWN COUNCIL, DOES ORDAIN AS FOLLOWS:

Chapter 24 Use and Sale of Vaping and Tobacco Products, as set forth in Attachment A, is hereby added to Title 7 of the Loomis Municipal Code.

The foregoing Ordinance was introduced for the first reading at a regular meeting of the Town of Loomis, Town Council, duly held on January 14, 2020 and the second reading on February 11, 2020. This ordinance shall take effect and be in full force thirty (30) days after the date of its passage by the following roll call vote:

- AYES:**
- NOES:**
- ABSTAINED:**
- ABSENT:**

Tim Onderko, Mayor

ATTEST:

APPROVED AS TO FORM:

Charleen Strock, Town Clerk

Jeffrey Mitchell, Town Attorney

ATTACHMENT A

Town of Loomis TITLE 7, HEALTH AND SAFETY CHAPTER 7.24 USE AND SALE OF VAPING AND TOBACCO PRODUCTS

Chapter 7.24 of the Loomis Municipal Code shall be known as "Use and Sale of Vaping and Tobacco Products" and is enacted as follows:

Sections:

- 7.24.010 Title and Purpose.**
- 7.24.020 Definitions.**
- 7.24.030 Use of Flavored E-Liquid and Tobacco Products by Minors Prohibited.**
- 7.24.040 Sale of Flavored E-Liquid Prohibited.**
- 7.24.050 Sale of Tobacco Products Near Parks and Schools Prohibited.**
- 7.24.060 Notice and Administrative Penalty.**
- 7.24.070 No Duty to Enforce.**
- 7.24.080 Severability.**

7.24.010 Title and Purpose.

This chapter shall be known as the Use and Sale of Vaping and Tobacco Products Ordinance. The purpose of this chapter is to protect the public health, safety, and general welfare of residents and guests of the Town of Loomis by enhancing the ability of law enforcement to deter the consumption and use of vaping and tobacco products by minors and to hold those that sell flavored e-liquid to minors accountable. This chapter is not intended to interfere with existing state and local laws.

7.24.020 Definitions.

The terms used in this chapter shall have the following meanings:

"Electronic smoking device" means an electronic device which can be used to deliver an inhaled dose of any substance, including any component, part, or accessory of such a device, whether or not sold separately, commonly used for vaping.

"Flavored e-liquid" (also known by various names such as "e-juice" and "vape juice") means any product that is used in an electronic smoking device and contains a constituent that imparts a characterizing flavor to the product or smoke produced

by the electronic smoking device, either by the addition of artificial or natural flavors or an herb or spice, including but not limited to menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

"Minor" is any person under twenty-one (21) years of age.

"Park" includes parks, playgrounds, and sports facilities operated by the Town, Placer County, or any School.

"Sale" means the exchange of a good or service for any form of consideration, whether monetary or other, by a person or business.

"School" means any place of public or private instruction in kindergarten, elementary, secondary, middle, or high school grades. School also includes any licensed child care center.

"Tobacco diversion program" means a rehabilitation program primarily aimed at educating participants on the health and safety impacts from the use of tobacco products.

"Tobacco product" means any product containing, made, or derived from tobacco 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. Tobacco product also means any item designed or marketed for the consumption, use, or preparation of tobacco or tobacco flavored product.

"Tobacco retailer" means a person or a business with a valid business license from the town pursuant to Chapter 5.04 and a valid tobacco retailer's license from the state pursuant to Business and Professions Code section 22972 for the same location.

"Vaping" means smoking with the aid of an electronic smoking device, e-cigarette, or other vaping device that heats liquid commonly called e-liquid.

7.24.030 Use of Flavored E-Liquid and Tobacco Products by Minors Prohibited.

It is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any minor to possess or use flavored e-liquid or any tobacco product within the town. When a minor is found in possession of flavored e-liquid or a tobacco product, it shall be prima facie evidence that they are in violation of this chapter.

7.24.040 Sale of Flavored E-Liquid Prohibited.

It is hereby declared to be unlawful, a public nuisance, and a violation of this chapter

for any person or business to create, permit, or otherwise allow, tacitly or otherwise, for the sale, offer for sale, or display for sale of any flavored e-liquid within the town.

7.24.050 Sale of Tobacco Products Near Parks And Schools Prohibited.

A. Except as permitted in subdivision B, it is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person or business to create, permit, or otherwise allow, tacitly or otherwise, the sale, offer for sale, or display for sale of any tobacco product within 1,000 feet of any park or school property.

B. Tobacco retailers in existence as of January 1, 2020 may continue to sell tobacco products within the business premises, defined in their business license from the Town, so long as the following conditions are met:

1. There is no lapse or revocation in either the business license from the Town or the tobacco retailer's license from the state;

2. The volume of tobacco products offered for sale at the tobacco retailer on the date of enactment of this chapter is not increased, even if the total space open to the public at the tobacco retailer is expanded at the same location;

3. No tobacco product is within 10 feet from any access point, including any window or door, to the tobacco retailer; and

4. The tobacco retailer does not have any advertisements for tobacco products that are visible at any time from the public right of way.

7.24.060 Notice and Administrative Penalty.

A. Notice of Violation. An enforcement officer may issue a notice of violation of this chapter and administrative citation to any person or business in violation of this chapter. Such notice shall be delivered via first-class mail or personally delivered. Such notice shall contain the following information: (1) the name of the person or business in violation of this chapter; (2) facts and circumstances surrounding the violation, including the date and approximate time; (3) the amount of administrative penalty assessed pursuant to this chapter; and (4) identification of the right, method, and time to appeal the citation.

B. Appeals. Appeals of administrative citations issued under this Chapter shall be governed by, and conducted pursuant to, Sections 1.20.060 and 1.20.070 of this Code.

C. Administrative Penalty. The total administrative penalty for violation of this chapter may be deemed a debt owed to the town by any person who violates this chapter. Any person owing such a debt may be liable in an action brought in the name of the town

for recovery of the same.

1. The first violation may result in a citation with a \$100.00 penalty.
2. The second violation within one year may result in a citation with a \$200.00 penalty.
3. The third and any subsequent violation within one year may result in a citation with a \$500.00 penalty.

D. Tobacco Diversion Program. Where a violation of this chapter is committed by a minor, the administrative citation may be exonerated and the penalty waived or refunded if, within six months of the citation, the person provides documentation to the Town of their participation in a tobacco diversion program approved by the Town.

E. All remedies set forth in this chapter are cumulative and the use of one or more remedies shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

7.24.070 No Duty to Enforce.

Nothing in this chapter shall be construed as imposing on the Town any duty to issue any violations of this chapter, and the Town shall not be held liable for failure to issue a citation for violation of this chapter.

7.24.080 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.