

# Frequently Asked Questions: California's Flavored Tobacco Sales Law

## California's Flavored Tobacco Sales Law

### **Q 1: Is it illegal to sell flavored tobacco products in California?**

Yes. Since December 21, 2022, California has prohibited the retail sale, offer for sale, and possession with the intent to sell or offer for sale of most flavored tobacco products and of tobacco product flavor enhancers in California. (Health and Safety Code section 104559.5(b)(1)) This law also applies to wholesalers, delivery and online sellers. (Business and Professions Code section 22978.3(a)(1), Revenue and Tax Code section 30101.7(d) (4).) As of January 1, 2025, distributors are prohibited from selling tobacco product flavor enhancers. (Health and Safety Code Section 104559.1(o)(1).)

The state law does not apply to the retail sale of flavored looseleaf pipe tobacco and flavored premium cigars with a wholesale price of \$12 or more. Flavored shisha (also known as hookah tobacco) may only be sold by a hookah tobacco retailer who meets the required conditions outlined in question 40 and 41. (Health and Safety Code sections 104559.5(c)(1), (c)(2), (c)(3), (c)(4), (d), and (e).)

If a local ordinance is more restrictive than state law and prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale **all** flavored tobacco products or more flavored tobacco products than required by state law, then stores in that jurisdiction must abide by the local ordinance. (Health and Safety Code section 104559.5(i).)

### **Q 2: What types of flavored tobacco products are prohibited under the state law?**

The state law prohibits a tobacco retailer, or any of their agents or employees, from making in-store or online sales of nearly all flavored tobacco products, including menthol cigarettes, flavored e-liquids, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored blunt wraps, flavored tobacco for making roll-your-own cigarettes, and flavored nicotine analog or alkaloid products. The sale of flavored e-cigarettes that deliver a vaporized liquid, regardless of whether they deliver nicotine, is also prohibited. (Health and Safety Code section 104559.5; HSC Section 104559.1(o)(1); Revenue and Tax Code section 30101.7(d) (4).) The law also imposes additional restrictions on delivery sellers, distributors, and

wholesalers of such tobacco products. (Revenue and Tax Code section 30101.7(d)(4), Health and Safety Code section 104559.1(o); Business and Professions Code sections 22974.2 and 22978.3.)

**Q 3: How can I tell if a tobacco product is flavored?**

Any tobacco product covered by the state law that has a taste or odor, other than the taste or odor of tobacco, distinguishable by an ordinary consumer either prior to or while consuming a tobacco product, including a cooling sensation distinguishable by an ordinary consumer, is a flavored tobacco product that is subject to California’s flavored tobacco sales restrictions on tobacco retailers, wholesalers, distributors, and delivery and online sellers. If any constituent in the product--meaning any substance other than tobacco, water, and reconstituted tobacco sheet--imparts a distinguishable cooling sensation or taste or odor other than tobacco, the product is flavored (but merely having a constituent does not make a product flavored). A tobacco product is presumed to be flavored if a manufacturer or any of their agents or employees has stated or made claims that the tobacco product has or produces a characterizing flavor. This may be determined based on, but not limited to, text, color, images on a tobacco product’s labeling or packaging that explicitly or implicitly communicates that the tobacco product has a characterizing flavor. (Health and Safety Code section 104559.5(a)(1), (a)(2), (a)(6), (a)(9), (a)(12), and (b)(2).)

**Q 4: What are “tobacco product flavor enhancers”?**

Tobacco product flavor enhancers include any product that produces a characterizing flavor when added to a tobacco product, even if the product does not contain tobacco or nicotine. This includes e-liquid flavor enhancers that can be used with a tobacco product but do not contain tobacco or nicotine. The state law defines a “tobacco product flavor enhancer” as “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.” (Health and Safety Code section 104559.5(a)(18).)

**Q 5: Are flavored nicotine products, flavored nicotine analogs and flavored nicotine alkaloid products legal for sale if the products do not contain tobacco?**

No. Effective January 1, 2025, “nicotine” under California’s flavored tobacco sales law means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogs. (Health and Safety Code section 104559.5(a)(11).) A flavored product with nicotine, a nicotine analog, or a nicotine alkaloid, even if it does not contain tobacco, is considered a “flavored tobacco product” and the sale of such products is in violation of state law. (Health and Safety Code section 104559.5(a)(6) and (a)(17)(A).)

**Q 6: How is this state law different from the Federal Food and Drug Administration’s (FDA) policy regulating the sale of some flavored tobacco products?**

The state law is more comprehensive than federal law. The state’s flavored tobacco sales restrictions are more stringent than federal requirements on flavored tobacco in that they specifically prohibit sales of all flavored cigarettes (including menthol), most flavored electronic devices that deliver nicotine or other vaporized liquids, flavored non-premium cigars, flavored smokeless tobacco, and flavored loose leaf roll-your-own tobacco.

**Q 7: Can flavored tobacco products listed on the California Tobacco Directory be sold in California?**

The [California Tobacco Directory](https://oag.ca.gov/tobacco/directory) (<https://oag.ca.gov/tobacco/directory>) is a list of manufacturers, brand families, and brand styles of “cigarettes”, as defined under Revenue and Taxation Code section 30165.1(a)(4), that are compliant with the Master Settlement Agreement, as defined under Health and Safety Code section 104556(e), Article 3 (commencing with section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations adopted pursuant to those provisions (Revenue and Taxation Code section 30165.1(c).) The California Tobacco Directory is not a list of cigarettes and/or tobacco products lawful for sale in the state under the California flavored tobacco sales laws (Health and Safety Code sections 104559.1 and 104559.5) or other state laws. Rather, the California Tobacco Directory operates in addition to any state or local restrictions related to the sale of flavored tobacco products, including Health and Safety Code sections 104559.1 and 104559.5. Therefore, the California Tobacco Directory may list flavored or mentholated products that are compliant with the Master Settlement Agreement (Revenue and Taxation Code section 30165.1) but are illegal for sale in California under California’s flavored tobacco sales law, regardless of whether those products are listed on the California Tobacco Directory.

## **Unflavored Tobacco List**

**Q 8: What is the Unflavored Tobacco List (UTL)?**

The [UTL](#) is a list of tobacco products that lack a characterizing flavor. State law requires the California Attorney General to establish and maintain this list on their website. California law prohibits retailers, wholesalers, distributors, and delivery and online sellers from selling products covered by the state flavored tobacco sales law to any person in California. (Health and Safety Code sections 104559.1 and 104559.5.) Any covered tobacco product not listed on the UTL will be considered a flavored tobacco product subject to California’s flavored tobacco sales laws.

### **Q 9: How will it be determined which products are on the Unflavored Tobacco List (UTL)?**

In determining whether to include a tobacco product brand style on the UTL, the California Attorney General may consider, among other factors, the information they receive from the manufacturer or importer of the tobacco product brand style. (Health and Safety Code section 104559.1(c).) Each manufacturer or importer of tobacco products is required to submit to the California Attorney General a list of all tobacco products that they manufacture or import for sale or distribution in or into California that lack a characterizing flavor. Any submission must include a certification by the manufacturer or importer, under penalty of perjury, that: describes each brand style, brand, and tobacco product category; describes, for each brand style, the status of any required authorization, approval, or order from the United States Food and Drug Administration; and certifies that each brand style lacks a characterizing flavor. The California Attorney General may deem each submission to be a request that the brand style be listed on the UTL. (Health and Safety Code section 104559.1(b)(1).) The California Attorney General shall decline to list on the UTL any tobacco product brand style that the California Attorney General reasonably determines has a characterizing flavor and may decline to list on the UTL any tobacco product brand style that is required to obtain and has not received a formal authorization, approval, or order from the United States Food and Drug Administration for sale in the United States. (Health and Safety Code section 104559.1(e).)

### **Q 10: How is the Unflavored Tobacco List (UTL) used?**

Tobacco sellers and enforcement agencies authorized to enforce California’s flavored tobacco sales law may use the UTL as a reference for unflavored tobacco products that may be sold by retailers, wholesalers, distributors, and delivery sellers in California. Any tobacco product covered under California’s flavored tobacco sales law that is not listed on the UTL is deemed a flavored tobacco product and is prohibited from sale in California. (Health and Safety Code section 104559.1(g).)

### **Q 11: How frequently will the UTL be updated?**

Following the initial publication of the UTL, the California Attorney General’s Office will review submitted products on a rolling bases and add them to the UTL as appropriate. (See Cal. Code Regs., tit. 11, § 947, subd. (g).)

The California Attorney General’s Office will post a public notice at <https://utl.doj.ca.gov> communicating the Attorney General’s intention to remove a product from the UTL at least 30 days in advance of removal. (See Cal. Code Regs., tit. 11, § 950, subds. (d), (e).)

**Q 12: How can I submit information about a flavored tobacco product for consideration on the UTL?**

In addition to the UTL, the Attorney General’s Office has developed a public information submission portal. If you have information to assist with the determination of a flavored tobacco product, you can submit it to the [Attorney General’s public portal](https://utl.doj.ca.gov) at: <https://utl.doj.ca.gov>.

**Q 13: Will there be a sell-off period for products not listed on the UTL?**

No. Covered tobacco products not listed on the UTL are deemed flavored tobacco products subject to California’s flavored tobacco sales laws. Tobacco sellers with concerns about products not appearing on the UTL should reach out to the product manufacturers to ensure the manufacturer is submitting their products to be considered for the UTL.

**Tobacco Sellers**

**Q 14: Does the statewide flavored tobacco sales law apply to online and delivery sales?**

Yes. Delivery sellers, including online sellers, must comply with any state and local tobacco retail laws applicable to retailers that sell tobacco products to consumers from a retail location, which includes the California flavored tobacco sales laws (Health and Safety Code sections 104559.1 and 104559.5), as well as all effective local tobacco sales laws in the jurisdiction into which they are selling, as if the delivery sales occurred entirely within that location. (Revenue and Taxation Code section 30101.7(d)(4); 15 USC 376a(a).) Delivery sellers are also prohibited from selling tobacco product flavor enhancers to consumers in California. (Health and Safety Code Section 104559.1(o)(1).)

**Q 15: Does the statewide flavored tobacco sales law apply to distributors or wholesalers?**

Yes. a distributor or wholesaler shall not sell any tobacco product not listed on the Unflavored Tobacco List or any tobacco product flavor enhancer to any retailer, wholesaler, or other person for sale in California. (Health and Safety Code section 104559.1 (o)(1).)

**Q 16: Is it illegal to buy flavored tobacco products in California?**

No. The state law prohibits retailers, or any of their agents and employees, delivery sellers, and online sellers from selling a flavored tobacco product or tobacco product flavor enhancer. The state law does not criminalize anyone for purchasing, using, or possessing a flavored tobacco product or tobacco product flavor enhancer for self-consumption. (Health and Safety Code section 104559.5(b)(1))

## **Q 17: When do retailers, wholesalers, distributors, and delivery and online sellers have to start complying with the law?**

As of **December 21, 2022**, retailers and their agents or employees can no longer legally sell, offer for sale, or possess with the intent to sell or offer for sale most flavored tobacco products and tobacco product flavor enhancers, regardless of whether the ultimate sale is in-store or online. (Health and Safety Code section 104559.5(b)(1).) As of **January 1, 2025**, delivery and online sellers are required to comply with state and local restrictions and penalties applicable to retailers that sell cigarettes or tobacco products from a retail location, including California's restrictions on the retail sale of most flavored tobacco products (Health and Safety Code sections 104559.1 and 104559.5), as if the sale took place at that location. (Revenue and Taxation Code section 30101.7(d)(4).) Wholesalers and distributors can no longer sell a flavored tobacco product not appearing on the UTL in California. Any covered tobacco product not listed on the UTL is considered a flavored tobacco product subject to California's flavored tobacco sales laws.

## **Penalties**

### **Q 18: What are the penalties for retailers selling or possessing flavored tobacco products?**

Effective January 1, 2025, a retailer or any entity who sells, offers for sale, or possesses with the intent to sell flavored tobacco products or tobacco product flavor enhancers is subject to civil penalties ranging from \$1,000 to \$20,000 or more per violation at the same location, that may be issued by an enforcing agency, including the California Department of Public Health (CDPH), Office of the Attorney General, and local law enforcement agencies (including city attorneys, district attorneys, and county counsels). In addition to these civil penalties, upon the referral to the California Department of Tax and Fee Administration (CDTFA) by CDPH of a retailer or entity who received a third, fourth, or fifth violation, CDTFA will assess an additional civil penalty of \$250 and suspend or revoke the retailer's cigarette and tobacco products license. (Health and Safety Code section 104559.5(f).)

Effective January 1, 2025, CDTFA or a law enforcement agency may seize flavored tobacco products or tobacco product flavor enhancers from a retailer in violation of California law and issue a civil penalty equal to fifty dollars (\$50) per individual package of flavored tobacco products and tobacco product flavor enhancers seized by either CDTFA or a law enforcement agency that delivered the seized product to CDTFA. In addition, CDTFA will suspend the retailer's cigarette and tobacco products license on a second seizure and revoke the license on a third seizure. (Business and Professions Code section 22974.2)

**Q 19: What are the penalties for wholesalers and distributors for selling flavored tobacco products?**

For each individual package of flavored tobacco product not listed on the Unflavored Tobacco List (UTL) and each tobacco product flavor enhancer that is sold by a wholesaler or distributor to any retailer, wholesaler, or other person for sale in California, the California Attorney General may assess civil penalties ranging from up to \$2,000 for the first violation to not more than \$10,000 for the fifth or subsequent violation within a five-year period against the wholesaler or distributor who sold such products. (Health and Safety Code section 104559.1(o)(3).)

Additionally, the California Department of Tax and Fee Administration (CDTFA) or a law enforcement agency may seize flavored tobacco products or tobacco flavor enhancers not listed on the UTL stored, owned, or possessed by wholesalers. (Business and Professions Code section 22978.3(a).) In addition to the seizure, CDTFA shall fine the wholesaler a civil penalty of \$50 per individual package of flavored tobacco products and tobacco product flavor enhancers seized. CDTFA shall also suspend the wholesaler’s cigarette and tobacco products license after a second seizure and revoke the license after a third seizure. (Business and Professions Code section 22978.3(b).)

CDTFA shall issue a warning notice upon discovery that a wholesaler or distributor sold tobacco products not listed on the UTL. CDTFA shall suspend a wholesaler’s or distributor’s cigarette and tobacco products license for a second offense and revoke the license after the third offense. (Business and Professions Code section 22978.3(c).)

**Q 20: How is “package” defined when the California Department of Tax and Fee Administration is assessing fines during product seizure?**

“Package” means the individual packet, box, or other container of flavored tobacco products or tobacco product flavor enhancers that are normally sold or intended to be sold at retail. “Package” does not include containers that contain smaller packaging units of flavored tobacco products or tobacco product flavor enhancers, including, but not limited to, cartons, cases, bales, or boxes. (BPC section 22974.2(b)(5).)

**Q 21: What are the penalties for delivery sellers who sell flavored tobacco products?**

Any delivery seller, including online seller, that fails to comply with applicable state or local ordinances effective in the jurisdiction into which they are selling, including the state’s flavored tobacco sales law, is guilty of a misdemeanor and shall be punished by a fine of up to \$5,000 and/or imprisonment. (Revenue and Taxation Code section 30101.7(e).) The California Attorney General or a city attorney, county counsel, or district attorney may bring a civil action against a seller not in compliance with the law and a court may assess penalties from \$1,000 to \$10,000 for multiple violations. (Revenue and Taxation Code section 30101.7(g).)

**Q 22: Can I be penalized for selling a flavored tobacco product if I didn't know that the product was flavored?**

Yes. It is incumbent upon the retailer, wholesaler, distributor, and delivery seller or their agents or employees to understand which tobacco products are flavored under state law and to ensure that they are not selling prohibited products. It is a violation of state law to sell a covered flavored tobacco product or a tobacco product flavor enhancer. (Health and Safety Code section 104559.5(b)(1); Health and Safety Code section 104559.1(o)(1); Revenue and Taxation Code section 30101.7(d)(4).) Additionally, it is a violation of state law for a retailer or any of the tobacco retailer's agents or employees to offer for sale or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. (Health and Safety Code section 104559.5(b)(1).)

**Q 23: Will a person who is not a retailer, delivery seller, online seller, wholesaler, or distributor be penalized for giving a flavored tobacco product to another person or possessing a flavored tobacco product?**

No. California's flavored tobacco sales law does not penalize a person, such as a consumer, who is not a retailer or their agents or employees, wholesaler, distributor, or online and delivery seller, from possessing a flavored tobacco product or giving a flavored tobacco product to another consumer who is 21 or over.

## **Enforcement**

**Q 24: Who has the authority to enforce California's flavored tobacco sales law?**

Effective January 1, 2024, primary responsibility for the enforcement of California's flavored tobacco sales law is the California Department of Public Health, Office of Youth Tobacco Enforcement. The California Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel are authorized to assess civil penalties against retailers in violation of the state law. (Health and Safety Code section 104559.5(g).)

Effective January 1, 2025, the California Department of Tax and Fee Administration, or a law enforcement agency, may search for and seize flavored tobacco products or tobacco product flavor enhancers that a retailer or wholesaler possesses, stores, owns, or has sold in violation of state law. (Business and Professions Code sections 22974.2(a)(1), 22978.3(a)(1).)

In addition, local enforcement agencies may have authority to administer and enforce a local flavor ordinance and jurisdictions may continue to enforce local ordinances that are more restrictive than state law consistent with penalties listed in the local ordinance. (Health and Safety Code section 104559.5(i).)

**Q 25: Who should I reach out to with enforcement questions or to report potential violations of California’s flavored tobacco sales law?**

For enforcement questions regarding California’s flavored tobacco sales law, contact the California Department of Public Health, Food and Drug Branch, Office of Youth Tobacco Enforcement at 916-650-6500.

To report suspected violations of the state flavored tobacco sales law, visit the [California Department of Tax and Fee Administration’s website](http://www.cdtfa.ca.gov/report-violation.htm) at [www.cdtfa.ca.gov/report-violation.htm](http://www.cdtfa.ca.gov/report-violation.htm) and click on “Report a Suspected Violation”.

**Products Covered by the Law**

**Q 26: Are e-cigarettes and other electronic devices used for smoking or vaping nicotine or other liquids prohibited for sale under the state flavored tobacco sales law?**

Yes. Subject to limited exemptions for certain nicotine replacement and cannabis products, if an e-cigarette or other electronic device that delivers nicotine or other vaporized liquid is sold in combination with or contains flavored e-liquid (regardless of whether the e-liquid contains nicotine), then it is a flavored tobacco product and prohibited for sale under California state law. (Health and Safety Code section 104559.5(a)(1), (a)(2), (a)(6), (a)(17).) If an e-cigarette or other electronic device is sold on its own and does not include any type of flavoring, then the e-cigarette or other electronic device is not prohibited by the state law and may continue to be sold. All e-cigarettes or other electronic smoking or vaping devices, regardless of if they deliver nicotine, and other tobacco product accessories, components or parts are considered tobacco products. (Health and Safety Code Section 104495(a)(8)(A) and Business and Professions Code section 22958(a)(1).)

**Q 27: Are flavored aromatherapy or essential oil vape pens prohibited for sale under the state flavored tobacco sales law?**

Yes. A flavored aromatherapy or essential oil vape pen does fall under the definition of a tobacco product, even if it does not contain nicotine, and may not be sold in California if it imparts a characterizing flavor. The state law defines a tobacco product as “an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including... an electronic cigarette, cigar, pipe, or hookah” and prohibits the retail sale of all flavored tobacco products that meet this definition. (Health and Safety Code section 104559.5(a)(17).) If an aromatherapy or essential oil vaping pen is sold on its own and does not impart a characterizing flavor, then the vaping pen is not prohibited by the state’s flavored tobacco sales law.

**Q 28: Are flavored hemp oil vape pens prohibited for sale under the state flavored tobacco product sales law?**

Yes. Under California state law, a flavored hemp oil vape pen falls under the definition of a flavored tobacco product, even if it does not contain nicotine, and may not be sold in California. The state law defines a tobacco product as “an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including... an electronic cigarette, cigar, pipe, or hookah” and prohibits the sale of all flavored products that meet this definition. (Health and Safety Code section 104559.5(a)(17).)

**Scenarios**

**Q 29: Can customers place an order for flavored tobacco products or enhancers online and have them delivered or buy online for in-store pick-up?**

No. Delivery sellers, including online sellers, must comply with all state and local tobacco laws, which include, but are not limited to, California’s law prohibiting the sale of most flavored tobacco products and of flavored tobacco product enhancers. This extends to online sales, including online sales of flavored tobacco products that are either delivered to the purchaser or are delivered to a store for in-store pick up. Delivery sellers must also comply with all applicable state laws or local ordinances that impose restrictions on the retail sale of tobacco products, flavored or not, directly to the public from a retail location as if the delivery sale occurred within California and in that jurisdiction (Revenue and Taxation Code section 30101.7(d)(4).)

**Q 30: Can I continue to sell flavored tobacco products that are already in my retail store?**

No. Since December 21, 2022, it has been illegal for California retailers to sell, offer for sale, or possess with the intent to sell or offer for sale flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored tobacco for making roll-your-own cigarettes, and tobacco product flavor enhancers. (Health and Safety Code section 104559.5(b)(1)) As of January 1, 2025, retailers may not sell flavored nicotine analogs or alkaloid products or products with a distinguishable cooling sensation covered by the state law. (Health and Safety Code section 104559.5(a)(1) and (11).)

**Q 31: What can retailers do with excess or unsold inventory?**

California retailers may contact the distributor or wholesaler from whom they purchased the product and request a refund for any excess or unsold inventory of flavored tobacco products or tobacco product flavor enhancers prohibited for sale under the state law. Distributors may request a refund of the excise tax on returned product only if they reported and paid this excise tax to the California Department of Tax and Fee

Administration. For information on how to initiate a claim for refund on cigarette tax stamps, read [Publication 63, Cigarette Distributor Licensing and Tax Stamp Guide](#). Retailers looking to dispose of flavored tobacco products should contact their hazardous waste department to see how to best dispose of the products.

**Q 32: I am a tobacco retailer in a jurisdiction in California that allows the retail sale of unflavored e-cigarettes and other tobacco products. The next city over in California prohibits the retail sale of these products. Can I still fulfill delivery orders that are shipped to jurisdictions in California with a stricter ordinance?**

No. Delivery sellers must comply with any applicable state and local laws of the jurisdiction into which they are selling and may not sell or ship prohibited products to the city or county in violation with a local law. (Revenue and Tax Code section 30101.7(d)(4); 15 USC 376a(a).)

**Q 33: If my city or county passed an ordinance banning the sale of flavored tobacco products for all retail stores except adult-only retail stores, can these adult-only retail stores continue to sell flavored tobacco products?**

No. The more restrictive state law on flavored tobacco sales applies in the jurisdiction. The state law prohibits a tobacco retailer or any of their agents or employees, and online/delivery sellers, from selling most flavored tobacco products at all retail locations, including adult-only stores. (Health and Safety Code section 104559.5.)

**Q 34: If my city or county passed an ordinance that bans the retail sale of flavored tobacco products but makes an exemption for menthol, can tobacco retailers continue to sell menthol-flavored tobacco products?**

No. The more restrictive state law on flavored tobacco products applies in the jurisdiction. The state law prohibits a tobacco retailer or any of the tobacco retailer’s agents or employees, and online/delivery sellers, from selling all menthol and other flavored e-cigarettes, cigarettes, little cigars and cigarillos, smokeless tobacco, flavored looseleaf tobacco for making roll-your-own cigarettes, and tobacco product flavor enhancers. (Health and Safety Code section 104559.5, Revenue and Taxation Code section 30101.7(d) (4).) California state law prohibits mint and menthol flavors in covered tobacco products, as well as tobacco products that mimic menthol by creating a “cooling sensation.” (Health and Safety Code section 104559.5(a)(1).)

**Q 35: If my city or county’s existing flavored tobacco ordinance is more restrictive than the state law, which law should I follow?**

If a local ordinance is more restrictive than state law, then retail stores in that jurisdiction and delivery and online sellers selling products to a customer in that jurisdiction must abide by the more restrictive local ordinance. (Health and Safety Code section 104559.5, Revenue

and Taxation Code section 30101.7(d)(4).) The state law allows jurisdictions to pass their own flavored tobacco ordinances and to continue to enforce existing ordinances if they are more restrictive than state law. (Health and Safety Code section 104559.5(i).)

**Q 36: If my city or county already has a law banning the sale of all flavored tobacco products, including flavored shisha or hookah tobacco, can hookah retailers now start selling flavored shisha/hookah tobacco?**

No. If a local ordinance is more restrictive than the state law, then stores in that jurisdiction and delivery sellers, including online sellers, selling products to a customer in that jurisdiction must abide by the local ordinance. A local ordinance that prohibits a tobacco retailer, or any of the tobacco retailer’s agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale all flavored tobacco products, including flavored shisha or hookah tobacco, is more restrictive than the state law and therefore shall be enforced in that jurisdiction. (Health and Safety Code section 104559.5, Revenue and Taxation Code section 30101.7(d)(4).)

**Q 37: My local ordinance prohibits flavored products that are not included in the state law. Am I allowed to sell them if they appear on the UTL?**

No. A local ordinance may be more restrictive than the state law, and retailers must also comply with any local ordinance restricting the sale of flavored tobacco products along with the state law. For example, some products that are exempt under the state law, like flavored looseleaf pipe tobacco, may be prohibited for sale in a local jurisdiction. (Health and Safety Code section 104559.5(i).)

**Q 38: Can someone over the age of 21 still buy flavored tobacco products?**

A person over the age of 21 in California may purchase tobacco products not covered by the statewide flavored tobacco sales law, including flavored looseleaf pipe tobacco, flavored premium cigars with a wholesale price of \$12 or more, and flavored shisha or hookah tobacco from a licensed hookah tobacco retailer that meets all the requirements to sell these products. (Health and Safety Code section 104559.5.) The state law prohibits a person from selling, giving, or in any way furnishing any tobacco product or tobacco paraphernalia to a person under the age of 21. (Business and Professions Code section 22958, Penal Code section 308(a)(1)(A)(i).) Retailers, or any of the tobacco retailer’s agents or employees in a jurisdiction that has a more restrictive local law that prohibits the retail sale of all tobacco products, flavored or unflavored, must abide by the local ordinance and may not sell such products to anyone regardless of age. (Health and Safety Code section 104559.5(i), Revenue and Taxation Code section 30101.7(d)(4).)

**Q 39: Can adult-only retail stores continue to sell flavored tobacco products?**

California’s flavored tobacco sales law does not prohibit an adult-only retail store from selling flavored looseleaf pipe tobacco and flavored premium cigars with a wholesale price of \$12 or more, or a hookah tobacco retailer from selling flavored shisha or hookah tobacco as long as certain conditions are met (see conditions listed in Questions 40 and 41). Retailers, or any of the tobacco retailer’s agents or employees in jurisdictions that have a more restrictive local law that prohibits the sale of all flavored tobacco products may not sell any flavored tobacco products to anyone regardless of age. (Health and Safety Code section 104559.5(i).) Similarly, online and delivery sellers must abide by the more restrictive local law and may not sell any flavored tobacco to a customer of any age in a jurisdiction that prohibits the sale of all flavored tobacco products. (Revenue and Taxation Code section 30101.7(d)(4).)

**Q 40: Can convenience retail stores continue to sell flavored shisha or hookah tobacco products?**

The convenience retail store must be a “hookah tobacco retailer” and meet certain requirements to sell flavored shisha or hookah tobacco as defined in the California’s flavored tobacco sales law. A “hookah tobacco retailer” is a tobacco retailer engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories. (Health and Safety Code section 104559.5(a)(8).) In order to sell flavored shisha or hookah tobacco, a hookah tobacco retailer must: 1) have a valid California cigarette and tobacco products retailer license issued by the California Department of Tax and Fee Administration to sell tobacco, 2) not permit anyone under 21 years of age to be present or enter the premises at any time, 3) operate in accordance with all state and local laws relating to the retail sale of tobacco products, and 4) operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including, but not limited to, those specified in section 6404.5 of the Labor Code, if consumption of tobacco products is allowed on the premises. (Health and Safety Code section 104559.5(c).) Online and delivery sellers that sell to a customer in a jurisdiction that prohibits the sale of flavored shisha or hookah tobacco products must abide by the local law when conducting a sale in that jurisdiction. (Health and Safety Code section 104559.5(i), Revenue and Taxation Code section 30101.7(d)(4).)

**Q 41: Can shisha or hookah bars/lounges still sell flavored shisha or hookah tobacco products and allow people to smoke flavored shisha or hookah tobacco products inside?**

To sell flavored shisha or hookah tobacco, a shisha or hookah bar or lounge must be a “hookah tobacco retailer” and meet certain requirements as defined by California’s flavored tobacco sales law. A “hookah tobacco retailer” is a tobacco retailer engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories. (Health and Safety Code section 104559.5(a)(8).) In order to sell flavored shisha or hookah tobacco, a hookah tobacco retailer: 1) must have a valid California cigarette and tobacco products

retailer license issued by the California Department of Tax and Fee Administration to sell tobacco, 2) must not permit anyone under 21 years of age to be present or enter the premises at any time, 3) shall operate in accordance with all state and local laws relating to the sale of tobacco products, and 4) if consumption of tobacco products is allowed on the premises, the retailer must operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including, but not limited to, those specified in section 6404.5 of the Labor Code. (Health and Safety Code section 104559.5(c).)

The state law permits smoking inside a hookah bar/lounge if the business qualifies as either a “retail or wholesale tobacco shop” or a “private smokers’ lounge.” A “retail or wholesale tobacco shop” is defined as any business establishment whose main purpose is the sale of tobacco products, and a “private smokers’ lounge” is defined as an enclosed area in or attached to a “retail or wholesale tobacco shop” that is dedicated to the use of tobacco products. (Labor Code section 6404.5(e)(1)(A) and (B).)

A hookah bar or lounge that allows customers to smoke inside may not serve food or beverages. (Labor Code section 6404.5 and California Attorney General Opinion No.09-507)

Retailers must also adhere to any other state or local laws that place requirements on the sale of flavored tobacco products or on the operating of hookah lounges/bars. Retailers in jurisdictions that have enacted laws that are more restrictive than state law, such as prohibiting the sale of flavored shisha or hookah tobacco or prohibiting smoking in hookah bars/lounges, must adhere to the more restrictive laws in the jurisdiction. (Health and Safety Code section 104559.5(i).) Similarly, online and delivery sellers may not sell flavored hookah or shisha tobacco to a customer in a jurisdiction that prohibits the sale of these products. (Revenue and Taxation Code section 30101.7(d)(4).)

**Q 42: Can a shisha or hookah bar that sells flavored shisha also operate as a restaurant?**

A shisha or hookah bar may sell flavored shisha and operate as a restaurant if all of the criteria listed in Question 40 and 41 are met. This includes restricting access to the premises of the restaurant to people 21 years of age and older. (Health and Safety Code section 104559.5(c).) Additionally, a hookah bar or lounge that allows customers to smoke inside may not serve food or beverages, so all smoking is required to take place on an outside patio or other area. (Labor Code section 6404.5 and California Attorney General Opinion No.09-507.) Retailers must also adhere to any other state or local laws that place requirements on the sale of flavored tobacco products or on the operating of hookah lounges/bars.