

ORDINANCE NO. 21-1136

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD AMENDING CHAPTER 5.114 (TOBACCO RETAILERS) OF TITLE 5 OF THE WEST HOLLYWOOD MUNICIPAL CODE TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS AND THE USE OF TOBACCO COUPONS AND DISCOUNTS.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 5.114.030 (Definitions) of Chapter 5.114 (Tobacco Retailers) of Title 5 (Business Licenses, Regulations, and Permits) of the West Hollywood Municipal Code is amended to add the below definitions in alphabetical order to read as follows :

“Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue; whether in paper, digital, or other form; distributed for commercial purposes to be later presented to obtain an article, product, service, or accommodation without charge or at a discounted price.

“Listed price” or “non-discounted price” means the higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco products are sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

“Package” means a pack, box, carton, or container of any kind, or if no other container, any wrapping, including cellophane, in which tobacco products are offered for sale, sold, or otherwise distributed to consumers.

“Retail price” means the price actually paid by the consumer for a tobacco product.

SECTION 2: Section 5.114.030 (Definitions) of Chapter 5.114 (Tobacco Retailers) of Title 5 (Business Licenses, Regulations, and Permits) of the West Hollywood Municipal Code is amended by revising the definitions of “flavored tobacco product” and “tobacco product” to read as follows:

“Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

“Tobacco product” means:

1. Any product containing, made, or derived from tobacco or nicotine 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, snuff, snus;

2. Any electronic smoking device, with or without nicotine;

3. Any flavored tobacco product;

4. Notwithstanding any provision of subsections (1) through (3) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

SECTION 3: Section 5.114.050 (Operating Requirements and Prohibitions) of Chapter 5.114 (Tobacco Retailers) of Title 5 (Business Licenses, Regulations, and Permits) of the West Hollywood Municipal Code is amended to add three new subsections (j), (k), and (l) in alphabetical order to read as follows:

j. *Prohibition of the Sale of Flavored Tobacco Products.* No tobacco retailer shall sell any flavored tobacco product, except for flavored shisha tobacco for use in a hookah is permitted. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

k. *Prohibition of Tobacco Coupons, Discounts, and Cross-Promotions.* No tobacco retailer shall:

1. Accept or redeem, or offer to accept or redeem, a coupon to allow a consumer to purchase a tobacco product at a retail price below the listed or non-discounted price;
2. Allow a consumer to purchase a tobacco product at a retail price below the listed or non-discounted price;
3. Accept or redeem, or offer to accept or redeem, a coupon to allow a consumer to purchase any tobacco product through a multi-package discount (e.g., the sale of three packs of cigarettes for less than the combined price of each pack), or otherwise sell any tobacco product to a consumer for less than the listed price in consideration for the purchase of any combination of tobacco product or item; or

- 4. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

I. *Exception for Legal Non-Conforming Uses.* The restrictions on the sale of flavored tobacco products set forth in subsection (j) shall not apply to the hookah lounge and restaurant located at 8828 Sunset Boulevard, provided that all flavored tobacco products are consumed onsite. Said business shall be responsible for ensuring that consumers to which it sells a flavored tobacco product consume the products onsite. This exception shall become void in the event the business’s legal non-conforming use rights to operate as a hookah lounge terminate pursuant to Section 7.08.030.e.4 and 19.72.050 of this Code.

SECTION 4: Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this ordinance.

SECTION 5: Environmental Review. The City Council finds that adoption and implementation of this ordinance is not a “project” for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378(b)(5). Alternatively, this ordinance is exempt from CEQA pursuant to 15061(b)(3), because it has no potential for causing a significant effect on the environment and impacts only products that are sold at existing businesses or the price of products.


SECTION 6: Effective Date. This ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code section 36937, except for Section 5.114.050(j) which shall not take effect until September 15, 2021.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 16th day of February, 2021 by the following vote:

AYES:	Councilmember:	D’Amico, Erickson, Shyne, Mayor Pro Tempore Meister, and Mayor Horvath.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.

DocuSigned by:


 LINDSEY P. HORVATH, MAYOR

ATTEST:
 DocuSigned by:


 MELISSA CROWDER, ACTING CITY CLERK

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF WEST HOLLYWOOD)

I, MELISSA CROWDER, Acting City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1136 was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 16th day of February, 2021, after having its first reading at the regular meeting of said City Council on the 1st day of February, 2021.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17th DAY OF FEBRUARY, 2021.

DocuSigned by:
MELISSA CROWDER
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MELISSA CROWDER, ACTING CITY CLERK