Regulations and Guidelines for Tobacco Retailers

Sale of Flavored Tobacco

Department of Public Health

Department of Business Affairs and Consumer Protection
DEFINITIONS

Terms used in these regulations and guidelines that are defined in Chapter 64 of Title 4 of the Chicago Municipal Code shall bear those definitions. Otherwise, for purposes of these regulations and guidelines:

(a) “Aroma” means a quality that can be perceived by the sense of smell.

(b) “Distinguishable” means clearly perceivable by either the sense of smell or taste.

(c) “Label” means a display of written, printed, or graphic matter upon the immediately proximate container of any tobacco product.

(d) “Labeling” means all labels and other written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.

(e) “Liquid nicotine” means any liquid, gel, or other solution that contains nicotine, but does not include any liquid, gel, or other solution enclosed in packaging that is both (1) prefilled and sealed by the manufacturer and (2) not intended to be opened by the consumer.

(f) “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

(g) “Ordinance” shall mean Ordinance No. O2013-9185, adopted by the Chicago City Council on Wednesday, December 11, 2013, which amends various provisions of Title 4, Chapter 64 of the Chicago Municipal Code.

(h) “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a product is offered for sale, sold, or otherwise distributed to consumers.

REGULATIONS

Retention Of Original Packaging From Out-Of-Package Sales Required.

(a) Every owner, operator, manager, or other person in control of an establishment that sells or offers for sale tobacco products separately from their original packaging shall retain on site the original labels, labeling, and packaging provided by the manufacturer for all such products.

(b) The original labels, labeling, and packaging from which contents are sold separately shall be retained while the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.
GUIDELINES FOR TOBACCO RETAILERS

Section 1. Products With Liquid Nicotine Presumed To Be Tobacco Products

(a) Because nicotine is ordinarily derived from tobacco, all e-cigarettes, e-hookah, vape pens, and other liquid nicotine products shall be presumed to contain nicotine derived from tobacco.

(b) If a retail tobacco dealer demonstrates to the satisfaction of the Commissioner of CDPH that the nicotine in a particular product has been derived from a source other than tobacco, the product shall not be subject to the Ordinance.

Section 2. Presumptively Flavored Tobacco Products.

(a) In administering the Ordinance, CDPH will presume:

(1) that a tobacco product is flavored if the product’s manufacturer, or any person authorized or permitted by the product’s manufacturer, makes or disseminates public statements or claims to the effect that the product has or produces a taste, characterizing flavor, or aroma other than tobacco;

(2) that a tobacco product is flavored if the label, labeling, or packaging includes a statement or claim that the product has or produces a taste, characterizing flavor, or aroma other than tobacco; and

(3) that a product containing liquid nicotine is flavored if the label, labeling, or packaging includes any statement or claim regarding its taste, characterizing flavor, or aroma, other than “plain,” “tobacco,” “regular,” “no flavor,” or “no flavor added.”

As used in these guidelines, a “statement or claim” includes text and/or images used to communicate information about the flavor, taste, or aroma of a tobacco product.

(b) In evaluating statements or claims regarding flavoring, CDPH will look for and consider, among other evidence, the terms set out in Exhibit A to these guidelines, as amended.

Section 3. Other Methods Of Identifying “Characterizing Flavors.”

(a) A tobacco product that is not presumed to be flavored (as outlined in Section 2 of these guidelines) may nevertheless be a deemed a flavored tobacco product if it has or imparts a characterizing flavor.

(b) Such a determination shall be made by CDPH, and involve one or more of the following methods, among others:

(1) testing a product using a panel of trained sensory testers;
(2) reviewing retail or market research data from any widely recognized information and measurement company regarding a product’s flavor or aroma; and

(3) reviewing any list of cigarettes (or other tobacco products) maintained by a government entity that contains certified information from tobacco manufacturers related to a product’s flavor (e.g., a “Directory of Certified Tobacco Manufacturers and Brands,” or a “Certification of Fire Safety/Ignition Propensity for Cigarettes” maintained by any Attorney General’s Office).

Section 4. Restricted Flavored Tobacco Product List.

(a) CDPH shall establish a list of tobacco products, entitled the “Restricted Flavored Tobacco Product List.” The list shall be published on the City of Chicago’s Open Data Portal.

(b) The “Restricted Flavored Tobacco Products List” shall be updated by CDPH four times a year – on March 1, June 1, September 1, and December 1.

(c) To provide affected retail tobacco dealers with a process to determine whether products in their inventory are restricted, the “Restricted Flavored Tobacco Product List” shall also be searchable through a “Flavored Tobacco Search Engine” posted on CDPH’s website, or by visiting www.FlavoredTobaccoSearchEngine.org.

Section 5. 90-Day Opportunity To Deplete Prohibited Stock.

(a) A retail tobacco dealer subject to the Ordinance shall be given a grace period of 90 days following publication of a particular product in the “Restricted Flavored Tobacco Product List” to cease selling that product.

(b) A retail tobacco dealer shall be given a grace period of 90 days following the establishment of a school within 500 feet of its location to cease selling products prohibited by the Ordinance.

(c) The 90-day grace period begins the day after a retail tobacco dealer has been given notice of a determination that it is subject to the Ordinance. Proper notice may include, but is not limited to a warning through an enforcement action, a notification of determination sent via U.S. Mail, or in the form of a condition placed on the license at the time of renewal or initial approval.

Section 6. Products Classified as “Flavored” – Objection Process.

(a) If CDPH classifies a tobacco product as having or imparting a characterizing flavor, a retail tobacco dealer subject to the Ordinance or the product’s manufacturer may object to that classification in writing. Only manufacturers and retail tobacco dealers subject to the Ordinance are eligible to file objections under this section.

(b) A photocopy or photograph of each side of the product’s package, label, or labeling must be included with any objection under this section. The images should clearly show the
product name, description, and any images on the package, label, or labeling. If the product has a Universal Product Code (UPC), it must be clearly visible in one of the photocopies or photos submitted.

(c) In addition to establishing eligibility to file an objection, as provided in subsection (a) of this section, and providing a photocopy or photo of the product’s packaging, an objection under this section shall also include all information and evidence the retail tobacco dealer or manufacturer deems relevant to determining whether the tobacco product has or imparts a characterizing flavor.

(d) Objections under this section, with supporting documentation, shall be addressed to Chicago Department of Public Health, Attn: Director of Policy, 333 S. State Street, Suite 2120, Chicago, Illinois 60604.

(e) CPDH shall, to the extent possible, respond within 30 days of receiving an objection under this section. CPDH’s response shall include: (1) a brief description of how the determination that a product has a characterizing flavor was made; (2) the identity of any entity involved in collecting the data or conducting the consumer research or product testing used to determine if the product has or produces a characterizing flavor; and (3) any other relevant findings of fact.

(f) The decision of CPDH shall be subject to review in accordance with applicable law.

(g) Any information that manufacturer submits to the City of Chicago pursuant to this section shall be deemed to be confidential and proprietary, subject, however, to disclosure if mandated by the Freedom of Information Act.

Section 7. Process For Contesting Determination That A Retail Tobacco Dealer Is Within 500 Feet Of A School.

(a) If a determination is made that a retail tobacco dealer is located within 500 feet of a school, and is therefore subject to the Ordinance, the dealer may object to the determination in writing. Written objections concerning whether a particular retail tobacco dealer is subject to the Ordinance will not be accepted from anyone except the retail tobacco dealer itself.

(b) A written objection under this section shall include a plat of survey and report documenting the distance measured between the nearest points between: (1) the property line of the closest school and (2) the property line of the retail tobacco outlet. The plat of survey must be prepared by a professional land surveyor, licensed by the state of Illinois. The plat of survey must bear the signature, stamp, and/or seal of the surveyor who takes professional responsibility for the document based upon the accepted standards of practice. The plat of survey must also contain the names and address of the retail tobacco dealer and the closest school.

(c) Written objections under this section, with supporting documentation, shall be submitted via email to BACPtobaccodispute@cityofchicago.org.
(d) The City will reimburse retail tobacco dealers for the usual and customary cost of a land survey associated with an objection under this section, provided the retail tobacco dealer prevails.

(e) BACP shall, to the extent possible, respond within 30 days of receiving an objection under this section.

Adopted on July 23, 2014; published on July 28, 2014; and shall become effective on August 7, 2014.

Bechara Choucair, M.D.  
Commissioner  
Chicago Dep’t of Public Health

Maria Guerra Lapacek  
Commissioner  
Dep’t of Business Affairs and Consumer Protection
GUIDELINES FOR TOBACCO RETAILERS – SALE OF FLAVORED TOBACCO PRODUCTS

EXHIBIT A
1) ALMOND
2) ALMOND COCONUT BAR
3) AMARETTO
4) ANISETTE
5) APPLE
6) APPLE BLEND
7) APPLE PIE
8) APPLE PIE ALA MODE
9) APPLETINI
10) APRICOT
11) ARCTIC MINT
12) AROMATIC BLACKCHERRY
13) ATOMIC FIRE BALL
14) BANANA
15) BANANA CREAM
16) BANANA CREAM PIE
17) BANANA GRAHAM
18) BANANA NUT BREAD
19) BANANA SPLIT
20) BAVARIAN CREAM
21) BELLINI
22) BERRY
23) BERRY BLAST
24) BERRY BLEND
25) BLACK BERRY
26) BLACK CHERRY
27) BLACK GRAPE
28) BLACK HONEY
29) BLACK LICORICE
30) BLACK WALNUT
31) BLACK WILD CHERRY
32) BLACKBERRY
33) BLACKBERRY CHOCOLATE
34) BLUE MINT
35) BLUEBERRY
36) BLUEBERRY CHEESECAKE
37) BLUEBERRY CHOCOLATE
38) BLUEBERRY CINNAMON CRUMBLE
39) BLUEBERRY COTTON CANDY
40) BLUEBERRY DELIGHT
41) B-MIX MENTHOL
42) BOLD WINTERGREEN
43) BOURBON
44) BOURBON WHISKEY
45) BRANDY
46) BUBBLE GUM
47) BUTTER PECAN
48) BUTTER RUM
49) BUTTERED POPCORN
50) BUTTERED RUM
51) BUTTERNUT
52) BUTTERSCOTCH
53) CAKE BATTER
54) CANDY APPLE
55) CANDY CANE
56) CANTALOUPE
57) CARAMEL
58) CARAMEL PEACH
59) CARAMEL POPCORN
60) CHAMPAGNE
61) CHECKERBERRY
62) CHEESECAKE
63) CHERRY
64) CHERRY BLEND
65) CHERRY CAVENDISH
66) CHERRY CHEESECAKE
67) CHERRY CLOVE
68) CHERRY DELIGHT
69) CHERRY LIQUEUR
70) CHERRY LIQUOR
71) CHERRY VANILLA
72) CHOCOLATE
73) CHOCOLATE AND COFFEE
74) CHOCOLATE BANANA
75) CHOCOLATE CHEESECAKE
76) CHOCOLATE COCONUT
77) CHOCOLATE COVERED RASPBERRIES
78) CHOCOLATE HAZELNUT
79) CHOCOLATE LICORICE
80) CHOCOLATE MINT
81) CHOCOLATE STRAWBERRY CRUMBLE
82) CINNAMON
83) CINNAMON BUN
84) CINNAMON CANDY
85) CINNAMON COFFEE CAKE
86) CINNAMON DANISH
87) CINNAMON GUM
88) CINNAMON SUGAR COOKIE
89) CIRCUS COTTON CANDY 135) GOLD AND HONEY
90) CITRUS 136) GOLDEN PINEAPPLE
91) CITRUS BLEND 137) GOLD’N HONEY
92) CITRUS MIST 138) GRAPE
93) CLOVE 139) GRAPE AND OAK
94) COCKTAIL 140) GRAPE W/MINT FLAVOR
95) COCONUT 141) GREEN APPLE
96) COCONUT CANDY 142) GREEN DE MENTHE
97) COGNAC 143) GREEN GRAPE
98) COOL MENTHOL 144) GUAVA
99) COOL MINT 145) GUMMY CANDY
100) COOL WINTERGREEN 146) HARVEST CANDY
101) COSMO 147) HAZELNUT
102) COTTON CANDY 148) HONEY
103) CRANBERRY 149) HONEY BERRY
104) CRAZY BERRY 150) HONEY CURED
105) CRAZY WATERMELON 151) HONEY DEW MELON
106) CREAM CHEESE FROSTING 152) HOT CINNAMON CANDY
107) CREAM DE MENTHE 153) HYPNOTIC
108) DABOMB BLUEBERRY 154) ICE MENTHOL
109) DAQUIRI 155) ICY MINT
110) DOUBLE APPLE 156) IRISH CREAM
111) DOUBLE CHOCOLATE 157) IRISH PEACH
112) DOUBLE WHITE GRAPE 158) JAMAICAN RUM
113) DRAGON FRUIT 159) JAVA
114) DRY MINT 160) JOLLY RANCHER
115) EGG NOG 161) JUNGLE JUICE
116) ENERGY DRINK 162) KAHHLUA
117) ENGLISH TOFFEE 163) KENTUCKY BOURBON
118) EXTRA MENTHOL 164) KETTLE CORN
119) EXTREME MENTHOL 165) KEY LIME PIE
120) FRENCH GRAPE 166) KHALUAH & CREAM
121) FRENCH TOAST 167) KIWI
122) FRENCH VANILLA 168) LEMON DROP
123) FRENCH VANILLA DELUXE 169) LEMON LIME
124) FRESH APPLE 170) LEMON MERINGUE PIE
125) FRESH-N-FRUITY 171) LEMON WITH MINT
126) FROSTED MINT 172) LIQUEUR
127) FRUIT 173) MANGO
128) FRUIT LOOP 174) MARGARITA
129) FRUIT LOOPS 175) MARSHMALLOWS
130) FRUIT PUNCH 176) MAXIMINT
131) FUDGE BROWNIE 177) MAYBACH MELON
132) G6 GRAPE 178) MELON
133) GEORGIA PEACH 179) MELON BLUE
134) GINGERBREAD 180) MENTHOL
181) MENTHOL CHROME
182) MENTHOL GOLD
183) MILD & VANILLA
184) MILD MENTHOL
185) MILD MINT
186) MILD SCOTCH
187) MILK CHOCOLATE
188) MINT
189) MINT BLEND
190) MINT CHILL
191) MINT PATTY
192) M-MIX MENTHOL
193) MOCHA
194) MOCHO MINT
195) MOJITO
196) MUMMY MINT
197) N-MIX MENTHOL
198) NORDIC MINT
199) NY CHEESECAKE
200) ORANGE
201) ORANGE COGNAC
202) ORANGE CREAM SODA
203) ORANGE CREAMSICLE
204) PAPAYA
205) PASSION FRUIT
206) PEACH
207) PEACH BLEND
208) PEACH MELBA
209) PEACH RUM
210) PEACHES AND CREAM
211) PEANUT BUTTER
212) PEANUT BUTTERCUP
213) PEAR
214) PEPPERMINT
215) PEPPERMINT FROST
216) PERFECT PEACH
217) PIE CRUST
218) PINA COLADA
219) PIÑA COLADA
220) PINEAPPLE
221) PINK BERRY
222) PINK CHAMPAGNE
223) PINK VANILLA
224) PISTACHIO
225) PLUM
226) P-MIX MENTHOL
227) POMEGRANATE
228) PRALINES AND CREAM
229) PREMIUM DARK WNTRGRN
230) RAISIN
231) RASPBERRY
232) RASPBERRY CREAM
233) RED HOTS
234) RED LICORICE
235) RED VELVET CAKE
236) ROOT BEER
237) ROZAY WINE
238) RUM
239) RUM AND COLA
240) RUM AND MINT
241) RUM CLOVE
242) RUM CURED
243) SAFARI MELON DEW
244) SALT WATER TAFFY
245) SANGRIA
246) SCOTCH
247) SEX ON THE BEACH
248) SHIPWRECK BERRY
249) SIMPLY MINT
250) SKINNY V MENTHOL
251) SMOOTH MINT
252) SMORE
253) SOFT VANILLA
254) SOUR APPLE
255) SOUR APPLICIOUS
256) SPEARMINT
257) SPICE
258) STRAWBERRIES & CREAM
259) STRAWBERRY
260) STRAWBERRY BANANA
261) STRAWBERRY CHEESECAKE
262) STRAWBERRY CREAM PIE
263) STRAWBERRY DAQUIRI
264) STRAWBERRY KIWI
265) STRAWBERRY MINT
266) STRAWBERRY SHORTCAKE
267) SUGAR COOKIE
268) SUPER RED HOTS
269) SWAG BERRY
270) SWEET CHERRY
271) SWEET GRAPE
272) SWEET PEACH
273) SWEET RASPBERRY
274) SWEET RUM
275) SWEET SCOTCH
276) SWEET SCTCH WLD CHRY
277) SWEET STRAWBERRY
278) SWEET TANGERINE
279) SWEET TANGY MELON
280) SWEET TARTS
281) SWEET VANILLA
282) SWEET WATERMELON
283) TANGERINE
284) TANGERINE DREAM
285) TEQUILA
286) TEQUILA LIME
287) TEQUILA SUNRISE
288) TOASTED ALMOND
289) TOASTED MARSHMALLOW
290) TOFFEE
291) TOFFEE MINT
292) TROPICAL COCONUT
293) TWIN MINT
294) TWISTED GRAPE
295) VANILLA
296) VANILLA BEAN ICE CREAM
297) VANILLA BLEND
298) VANILLA BUTTERNUT
299) VANILLA CAVENDISH
300) VANILLA CLOVE
301) VANILLA CUPCAKE
302) VANILLA SKY
303) VANILLA SWIRL
304) WATERMELON
305) WATERMELON WITH MINT
306) WET MANGO
307) WHISKEY
308) WHISKEY BLEND
309) WHISKEY CAVENDISH
310) WHITE CHOCOLATE
311) WHITE GRAPE
312) WHITE VANILLA
313) WHITE WINE
314) WILD APPLE
315) WILD BERRY
316) WILD CHERRY
317) WILD RUM
318) WILD BERRY
319) WINE
320) WINE BERRY
321) WINE GRAPE B
322) WINE GRAPES
323) WINTERGREEN
324) WINTERGREEN BLEND
325) WINTERGREEN CHEW
326) XOTIC BERRY
327) YELLOW CAKE
How the City of Chicago Identifies “Flavored Tobacco Products”

Does the product in question contain any nicotine or tobacco in any form that is intended for human consumption?

YES
Is the product FDA approved for sale as a cessation product or for other medical purposes?

YES
FDA approved cessation products are not regulated by the City of Chicago as tobacco products.

NO
Is the product a liquid or gel with nicotine such as those used in e-cigarettes?

YES
Does the product or its packaging, on its face, use only the terms “plain,” “tobacco,” “regular” “no flavor,” or “no flavor added,” to describe its flavor?

YES
This product is not considered to be a flavored tobacco product by the City of Chicago.

NO
This product is regulated by the City of Chicago as a flavored tobacco product. Effective November 5, 2014, the sale of this product is restricted within 500 feet of a school. The only exception is for a “retail tobacco store,” which is defined in Chicago Municipal Code § 7-32-010 (i.e., stores that derive more than 80% of gross revenue from tobacco products and related accessories).

No retail tobacco dealers are “grandfathered in.”

NO
Does the product or its packaging, on its face, state it has a flavor or aroma, such as menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, and/or any spice?

YES
Visit www.FlavoredTobaccoSearchEngine.org and enter the product’s UPC code to be certain the product does not appear on the Chicago Department of Public Health’s “Restricted Flavored Tobacco Product List.” Or, download a list of known products known to be restricted.

If the product is listed, its sale is restricted within 500 feet of schools. Enforcement will start on the date listed in the Search Engine's database.

The “Flavored Tobacco Search Engine” is updated on the first day of March, June, September, and December. Tobacco retailers should reconcile their inventory against the Flavored Tobacco Search Engine with every quarterly update.