
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 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. CDPH'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 CDPH 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.

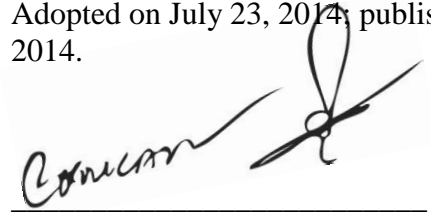
(b) A written objection under this section shall include a plat of survey and report documenting the distance measured between the nearest points between: (1) the property line of the closest school and (2) the property line of the retail tobacco outlet. The plat of survey must be prepared by a professional 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.

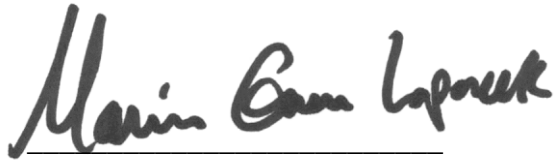
(d) The City will reimburse retail tobacco dealers for the usual and customary cost of a land survey associated with an objection under this section, provided the retail tobacco dealer prevails.

(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

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|-----|-------------------------------|-----|----------------------------------|
| 1) | ALMOND | 45) | BRANDY |
| 2) | ALMOND COCONUT BAR | 46) | BUBBLE GUM |
| 3) | AMARETTO | 47) | BUTTER PECAN |
| 4) | ANISETTE | 48) | BUTTER RUM |
| 5) | APPLE | 49) | BUTTERED POPCORN |
| 6) | APPLE BLEND | 50) | BUTTERED RUM |
| 7) | APPLE PIE | 51) | BUTTERNUT |
| 8) | APPLE PIE ALA MODE | 52) | BUTTERSCOTCH |
| 9) | APPLETINI | 53) | CAKE BATTER |
| 10) | APRICOT | 54) | CANDY APPLE |
| 11) | ARCTIC MINT | 55) | CANDY CANE |
| 12) | AROMATIC BLACKCHERRY | 56) | CANTALOUPE |
| 13) | ATOMIC FIRE BALL | 57) | CARAMEL |
| 14) | BANANA | 58) | CARAMEL PEACH |
| 15) | BANANA CREAM | 59) | CARAMEL POPCORN |
| 16) | BANANA CREAM PIE | 60) | CHAMPAGNE |
| 17) | BANANA GRAHAM | 61) | CHECKERBERRY |
| 18) | BANANA NUT BREAD | 62) | CHEESECAKE |
| 19) | BANANA SPLIT | 63) | CHERRY |
| 20) | BAVARIAN CREAM | 64) | CHERRY BLEND |
| 21) | BELLINI | 65) | CHERRY CAVENDISH |
| 22) | BERRY | 66) | CHERRY CHEESECAKE |
| 23) | BERRY BLAST | 67) | CHERRY CLOVE |
| 24) | BERRY BLEND | 68) | CHERRY DELIGHT |
| 25) | BLACK BERRY | 69) | CHERRY LIQUEUR |
| 26) | BLACK CHERRY | 70) | CHERRY LIQUOR |
| 27) | BLACK GRAPE | 71) | CHERRY VANILLA |
| 28) | BLACK HONEY | 72) | CHOCOLATE |
| 29) | BLACK LICORICE | 73) | CHOCOLATE AND COFFEE |
| 30) | BLACK WALNUT | 74) | CHOCOLATE BANANA |
| 31) | BLACK WILD CHERRY | 75) | CHOCOLATE CHEESECAKE |
| 32) | BLACKBERRY | 76) | CHOCOLATE COCONUT |
| 33) | BLACKBERRY CHOCOLATE | 77) | CHOCOLATE COVERED
RASPBERRIES |
| 34) | BLUE MINT | 78) | CHOCOLATE HAZELNUT |
| 35) | BLUEBERRY | 79) | CHOCOLATE LICORICE |
| 36) | BLUEBERRY CHEESECAKE | 80) | CHOCOLATE MINT |
| 37) | BLUEBERRY CHOCOLATE | 81) | CHOCOLATE STRAWBERRY |
| 38) | BLUEBERRY CINNAMON
CRUMBLE | 82) | CINNAMON |
| 39) | BLUEBERRY COTTON CANDY | 83) | CINNAMON BUN |
| 40) | BLUEBERRY DELIGHT | 84) | CINNAMON CANDY |
| 41) | B-MIX MENTHOL | 85) | CINNAMON COFFEE CAKE |
| 42) | BOLD WINTERGREEN | 86) | CINNAMON DANISH |
| 43) | BOURBON | 87) | CINNAMON GUM |
| 44) | BOURBON WHISKEY | 88) | CINNAMON SUGAR COOKIE |

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| 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 BERRY |
| 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) KAHLUA |
| 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) MARSHMALLOW |
| 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 |

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| 181) MENTHOL CHROME | 227) POMEGRANATE |
| 182) MENTHOL GOLD | 228) PRALINES AND CREAM |
| 183) MILD & VANILLA | 229) PREMIUM DARK WNTRGRN |
| 184) MILD MENTHOL | 230) RAISIN |
| 185) MILD MINT | 231) RASPBERRY |
| 186) MILD SCOTCH | 232) RASPBERRY CREAM |
| 187) MILK CHOCOLATE | 233) RED HOTS |
| 188) MINT | 234) RED LICORICE |
| 189) MINT BLEND | 235) RED VELVET CAKE |
| 190) MINT CHILL | 236) ROOT BEER |
| 191) MINT PATTY | 237) ROZAY WINE |
| 192) M-MIX MENTHOL | 238) RUM |
| 193) MOCHA | 239) RUM AND COLA |
| 194) MOCHO MINT | 240) RUM AND MINT |
| 195) MOJITO | 241) RUM CLOVE |
| 196) MUMMY MINT | 242) RUM CURED |
| 197) N-MIX MENTHOL | 243) SAFARI MELON DEW |
| 198) NORDIC MINT | 244) SALT WATER TAFFY |
| 199) NY CHEESECAKE | 245) SANGRIA |
| 200) ORANGE | 246) SCOTCH |
| 201) ORANGE COGNAC | 247) SEX ON THE BEACH |
| 202) ORANGE CREAM SODA | 248) SHIPWRECK BERRY |
| 203) ORANGE CREAMSICLE | 249) SIMPLY MINT |
| 204) PAPAYA | 250) SKINNY V MENTHOL |
| 205) PASSION FRUIT | 251) SMOOTH MINT |
| 206) PEACH | 252) SMORE |
| 207) PEACH BLEND | 253) SOFT VANILLA |
| 208) PEACH MELBA | 254) SOUR APPLE |
| 209) PEACH RUM | 255) SOUR APPLICIOUS |
| 210) PEACHES AND CREAM | 256) SPEARMINT |
| 211) PEANUT BUTTER | 257) SPICE |
| 212) PEANUT BUTTERCUP | 258) STRAWBERRIES & CREAM |
| 213) PEAR | 259) STRAWBERRY |
| 214) PEPPERMINT | 260) STRAWBERRY BANANA |
| 215) PEPPERMINT FROST | 261) STRAWBERRY CHEESECAKE |
| 216) PERFECT PEACH | 262) STRAWBERRY CREAM PIE |
| 217) PIE CRUST | 263) STRAWBERRY DAQUIRI |
| 218) PINA COLADA | 264) STRAWBERRY KIWI |
| 219) PIÑA COLADA | 265) STRAWBERRY MINT |
| 220) PINEAPPLE | 266) STRAWBERRY SHORTCAKE |
| 221) PINK BERRY | 267) SUGAR COOKIE |
| 222) PINK CHAMPAGNE | 268) SUPER RED HOTS |
| 223) PINK VANILLA | 269) SWAG BERRY |
| 224) PISTACHIO | 270) SWEET CHERRY |
| 225) PLUM | 271) SWEET GRAPE |
| 226) P-MIX MENTHOL | 272) SWEET PEACH |

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| 273) SWEET RASPBERRY | 301) VANILLA CUPCAKE |
| 274) SWEET RUM | 302) VANILLA SKY |
| 275) SWEET SCOTCH | 303) VANILLA SWIRL |
| 276) SWEET SCTCH WLD CHRY | 304) WATERMELON |
| 277) SWEET STRAWBERRY | 305) WATERMELON WITH MINT |
| 278) SWEET TANGERINE | 306) WET MANGO |
| 279) SWEET TANGY MELON | 307) WHISKEY |
| 280) SWEET TARTS | 308) WHISKEY BLEND |
| 281) SWEET VANILLA | 309) WHISKEY CAVENDISH |
| 282) SWEET WATERMELON | 310) WHITE CHOCOLATE |
| 283) TANGERINE | 311) WHITE GRAPE |
| 284) TANGERINE DREAM | 312) WHITE VANILLA |
| 285) TEQUILA | 313) WHITE WINE |
| 286) TEQUILA LIME | 314) WILD APPLE |
| 287) TEQUILA SUNRISE | 315) WILD BERRY |
| 288) TOASTED ALMOND | 316) WILD CHERRY |
| 289) TOASTED MARSHMALLOW | 317) WILD RUM |
| 290) TOFFEE | 318) WILDBERRY |
| 291) TOFFEE MINT | 319) WINE |
| 292) TROPICAL COCONUT | 320) WINE BERRY |
| 293) TWIN MINT | 321) WINE GRAPE B |
| 294) TWISTED GRAPE | 322) WINE GRAPES |
| 295) VANILLA | 323) WINTERGREEN |
| 296) VANILLA BEAN ICE CREAM | 324) WINTERGREEN BLEND |
| 297) VANILLA BLEND | 325) WINTERGREEN CHEW |
| 298) VANILLA BUTTERNUT | 326) XOTIC BERRY |
| 299) VANILLA CAVENDISH | 327) YELLOW CAKE |
| 300) VANILLA CLOVE | |

GUIDELINES FOR TOBACCO RETAILERS – SALE OF FLAVORED TOBACCO PRODUCTS

EXHIBIT B

How the City of Chicago Identifies “Flavored Tobacco Products”

