



TOWN OF FALMOUTH ORDINANCE NO 64-2024

Amendments to Ch. II-10 of the Code of Ordinances to Establish a New Section, 10-5, Sale of Flavored Tobacco Products Prohibited.

Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Code of Ordinances Ch. II-10, be amended as follows:

CH. II-10 MISCELLANEOUS OFFENSES

Sec. 10-5. Sale of Flavored Tobacco Products Prohibited.

Sec. 10-5.1. Definitions.

Electronic Smoking Device: Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Flavored tobacco product: any tobacco product, within the Town of Falmouth, that imparts, or is advertised, displayed, or packaged by a retailer, in such a way as to convey that it imparts, a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey or any candy, dessert, beverage, herb or spice; or a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of the tobacco product.

Retailer: Any person or entity that is licensed by the State of Maine to sell tobacco products.

Tobacco Product: means:

1. Any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled,

absorbed, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus;

2. Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. Any component, part, or accessory of subsection (1) or (2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.

Specifically excluded from this definition are drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Sec. 10-5.2. Sale of Flavored Tobacco Products Prohibited.

No retailer shall sell or offer for sale any flavored tobacco product, or display, market, or advertise for sale, within the Town of Falmouth, any flavored tobacco product.

There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a retailer, manufacturer of tobacco products, or any employee or agent of a retailer or manufacturer of tobacco product, or any person that sells tobacco in the Town, has:

1. Made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco;
2. Used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or
3. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

Sec. 10-5.3. Enforcement; Violations and Penalties.

The Town Manager or their designee(s) shall have the primary responsibility for enforcement of this ordinance and may conduct random inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance. If the Town Manager or their designee(s) determine(s) that a violation of this chapter has occurred, the Town Manager or their designee(s) may issue a written warning or citation giving notice to the retailer that a civil violation has occurred. Subsequent violations of this chapter may also be subject to fines and penalties as set forth below.

1. A fine of \$500 for the second violation, to be recovered upon complaint to Maine District Court or Superior Court, for use of the Town.
2. A fine of \$1,000 for the third violation and each subsequent violation, to be recovered upon complaint to Maine District or Superior Court, for use of the Town.

In addition to the penalties established above, the Town may institute or cause to be instituted any and all actions, legal, or equitable, that may be appropriate or necessary for the enforcement or the provisions of this chapter. The Town may seek injunctive relief in addition to or instead of fines/penalties. The Town shall be entitled to recover its costs of enforcement, including its reasonable attorneys' fees.

Sec. 10-5.4. Effective Date.

This ordinance shall become effective on March 12, 2024.

Attest: _____

Ellen Planer
Town Clerk
December 11, 2023