

Article 8: Minors

Division 3: Restricting the Sale, Advertising and Promotion of Tobacco Products to Minors

*(“Restricting the Sale, Advertising and Promotion
of Tobacco Products to Minors,”
added 10-20-1998 by O-18597 N.S.)*

§58.0301 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Advertising means printed matter that calls the public’s attention to things for sale.

Advertising display sign means a sign, sign-board, billboard, poster, banner, or the like that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

City has the same meaning as in San Diego Municipal Code section 11.0210.

Director has the same meaning as in San Diego Municipal Code section 11.0210.

Electronic cigarette has the same meaning as in San Diego Municipal Code section 43.1001.

Electronic cigarette paraphernalia has the same meaning as in San Diego Municipal Code section 33.4502.

Electronic cigarette retailer has the same meaning as in San Diego Municipal Code section 33.4502.

Person has the same meaning as in San Diego Municipal Code section 11.0210.

Self-service display means an open display of *tobacco products* or *electronic cigarettes* that the public has access to without the intervention of an employee.

Tobacco product has the same meaning as in San Diego Municipal Code section 33.4502.

Tobacco retailer has the same meaning as in San Diego Municipal Code section 33.4502.

Vendor-assisted means that only a store employee has access to the *tobacco product* and assists a customer by supplying the product, and the customer does not take possession of the product until it is purchased.

Vaping juice has the same meaning as in Municipal Code section 33.4502.

(“*Definitions*” added 10-20-1998 by O-18597 N.S.)

(Amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

(Amended 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)

§58.0302 Location of Tobacco Products and Advertising Inside Retail Establishments

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to place or maintain, or cause to be placed or maintained, any displays containing *tobacco products* within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell *tobacco products*, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.
- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to place or maintain, or cause to be placed or maintained, any *advertising display sign* for *tobacco products* within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell *tobacco products*, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.

(“*Location of Tobacco Products and Advertising Inside Retail Establishments*” added 10-20-1998 by O-18597 N.S.)

(Renumbered from former Section 58.0305 and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015. Former Section 58.0302 “*Measure of Distance*” repealed.)

§58.0303 Location of Electronic Cigarettes and Advertising Inside Retail Establishments

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to place or maintain, or cause to be placed or maintained, any displays containing *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell *tobacco products*, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.
- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to place or maintain, or cause to be placed or maintained, any *advertising display sign* for *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell *tobacco products*, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.

(“Location of Electronic Cigarettes and Advertising Inside Retail Establishments” added 8-7-2015 by O-20554 N.S.; effective 9-6-2015. Former Section 58.0303 “Advertising Restrictions” repealed.)

§58.0304 Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments

- (a) Sections 58.0302 and 58.0303 do not apply to retail establishments where access to the premises by *persons* under 21 years of age is prohibited by law.
- (b) Sections 58.0302(a) and 58.0303(a) do not apply to displays in any establishment that are located behind a counter and not accessible to patrons.

(“Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments,” added 10-20-1998 by O-18597 N.S.)

(Renumbered from former Section 58.0306, retitled from “Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments” to “Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments,” and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015. Former Section 58.0304 “Exceptions to Advertising Restrictions” repealed.)
(Amended 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)

§58.0305 Identification Required for Purchase of Tobacco Products and Electronic Cigarettes

It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell any *tobacco product*, *electronic cigarette*, *electronic cigarette paraphernalia*, or *vaping juice* to an individual who appears to be less than 27 years of age, without first verifying by means of photographic identification containing the bearer's date of birth, that the purchaser is not younger than 21 years of age, unless the seller has some other reliable basis for determining the purchaser's age.

(“*Identification Required for Purchase of Tobacco Products*” added 10-20-1998 by O-18597 N.S.)

(Renumbered from former Section 58.0307, retitled from “*Identification Required for Purchase of Tobacco Products*,” to “*Identification Required for Purchase of Tobacco Products and Electronic Cigarettes*” and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

(Amended 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)

§58.0306 Sale and Distribution of Tobacco Products and Electronic Cigarettes

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell, permit to be sold, offer for sale, or display for purposes of sale, by means of *self-service displays* or by any means other than *vendor-assisted sales*, any *tobacco products*.
- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to sell, permit to be sold, offer for sale, or display for purposes of sale, by means of *self-service displays* or by any means other than *vendor-assisted sales*, any *electronic cigarette*, *electronic cigarette paraphernalia*, or *vaping juice*.

(“*Sale and Distribution of Tobacco Products*” added 10-20-1998 by O-18597 N.S.)

(Renumbered from former Section 58.0308, retitled from “*Sale and Distribution of Tobacco Products*” to “*Sale and Distribution of Tobacco Products and Electronic Cigarettes*,” and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

§58.0307 Distribution of Tobacco or Electronic Cigarette Samples or Promotional Items

- (a) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic cigarette retailer* to distribute free *tobacco products* or promotional items, except in enclosed areas where *persons* under 21 years of age are not permitted.
- (b) It is unlawful for any *person*, business, *tobacco retailer*, or *electronic retailer* to distribute free *electronic cigarettes*, *electronic cigarette paraphernalia*, *vaping juice*, or promotional items, except in enclosed areas where *persons* under 21 years of age are not permitted.

(“*Distribution of Tobacco Samples or Promotional Items*” added 10-20-1998 by O-18597 N.S.)

(Renumbered from former Section 58.0309, retitled from “*Distribution of Tobacco Samples or Promotional Items*” to “*Distribution of Tobacco or Electronic Cigarette Samples or Promotional Items*,” and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

(Amended 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)

§58.0308 Posting of Signs Regarding Sales to Persons Under Twenty-One Years of Age

- (a) Every *person* who sells or deals in *tobacco products* shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of *tobacco products* to *persons* under 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase *tobacco products*. The letters of the sign shall be at least one-half inch in height.
- (b) Any sign meeting the content requirements of California Business and Professions Code section 22952(b) and regulations promulgated thereunder satisfies section 58.0308(a).
- (c) It is unlawful for any *person* who sells or deals in *tobacco products* to fail to post a sign in accordance with section 58.0308(a) or (b).
- (d) Every *person* who sells or deals in *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of *electronic cigarettes*, *electronic cigarette paraphernalia*, and *vaping juice* to *persons* under 21 years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase *electronic cigarettes*, *electronic cigarette paraphernalia*, and *vaping juice*. The letters of the sign shall be at least one-half inch in height.

- (e) It is unlawful for any *person* who sells or deals in *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* to fail to post a sign in accordance with section 58.0308(d).

(*“Posting of Signs Regarding Sales to Minors” added 10-20-1998 by O-18597 N.S.*)
(Renumbered from former Section 58.0310 and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

(Retitled from “Posting of Signs Regarding Sales to Minors” to “Posting of Signs Regarding Sales to Persons Under Twenty-One Years of Age” and amended 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)

§58.0309 Enforcement

- (a) Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code section 12.0201. Any *Director* may also seek injunctive relief and civil penalties pursuant to Municipal Code section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.
- (b) Any *person* who commits or proposes to commit an act in violation of this Division is subject to the jurisdiction of a court of competent jurisdiction. An action for injunction may be brought by any aggrieved *person*, or any *person* or entity which will fairly and adequately represent the interests of the protected class.
- (c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys’ fees as determined by the court. In addition to all other damages, the court may award the plaintiffs a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.
- (d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved *person* may have and are not intended to be exclusive.

(*“Enforcement” added 10-20-1998 by O-18597 N.S.*)

(Renumbered from former Section 58.0312 and amended 8-7-2015 by O-20554 N.S.; effective 9-6-2015.)

(Renumbered from Section 58.0310 to Section 58.0309 on 6-2-2022 by O-21455 N.S.; effective 1-1-2023.)