

# REQUEST FOR LEGAL SERVICES

**D a t e:** November 20, 2024  
**F r o m:** Shane M. Sinenci, Chair  
Water Authority, Social Services, and Parks Committee

TRANSMITTAL

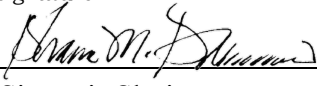
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Selina Pannell, Esq.

**Subject:** Bill 156 (2024), TO PROHIBIT RETAILERS FROM SELLING OR MARKETING FLAVORED TOBACCO PRODUCTS AND MISLABELING PRODUCTS AS NICOTINE-FREE

(WASSP-15)

**Background Data:** Please see CD1 version of Bill 156 (2024). Please submit your response to wassp.committee@mauicounty.us with a reference to WASSP-15.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Shane M. Sinenci, Chair	Contact Person <u>Clarissa MacDonald</u> (Telephone Extension: <u>7135</u> )
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ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 26, 2024  
REASON: For posting on the December 6, 2024, Council agenda

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

wassp:ltr:015acc01:clm

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. **156, CD1** (2024)

A BILL FOR AN ORDINANCE AMENDING TITLE 8, MAUI COUNTY CODE,  
TO PROHIBIT RETAILERS FROM SELLING OR MARKETING FLAVORED  
TOBACCO PRODUCTS AND MISLABELING PRODUCTS AS NICOTINE-FREE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance’s purpose is to prohibit retailers from selling or marketing flavored tobacco products—including products with menthol and products that produce cooling sensations—and mislabeling products as nicotine-free. Under Section 328J-11.5(b), Hawai‘i Revised Statutes, county councils are preempted from enacting ordinances “that regulate the sale of cigarettes, tobacco products, and electronic smoking devices.” However, the Council is concerned that the escalating use of electronic smoking devices has led to a significant rise in youth nicotine addiction. According to the American Academy of Pediatrics, flavors are one of the main reasons young people initiate tobacco use. Because of these products’ detrimental health effects and addictive nature, this Ordinance is intended to ban flavored tobacco products if Section 328J-11.5(b), Hawai‘i Revised Statutes, or any other relevant statute preempting county ordinances is repealed.

SECTION 2. Title 8, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

## “Chapter 8.22

### FLAVORED TOBACCO PRODUCTS

Sections:

8.22.010	Definitions.
8.22.020	Presumptions.
8.22.030	Prohibitions.
8.22.040	Enforcement.
8.22.050	Exceptions.
8.22.060	Penalties.

**8.22.010 Definitions.** In this chapter, unless the context requires otherwise:

“Distinguishable” means perceptible to the sense of smell, taste, or touch.

“Electronic smoking device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, vape pen, dab rig, or e-hookah, or under any other product name or descriptor. “Electronic smoking device” does not include 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.

“Flavored tobacco product” means a tobacco product that imparts:

1. A taste or smell, or both, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer before, during, or after the consumption of a tobacco product, including any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice; or
2. A cooling or numbing sensation distinguishable by an ordinary consumer during consumption of the tobacco product.

“Labeling” means written, printed, pictorial, or graphic matter on a tobacco product or its packaging.

“Nicotine” means natural or synthetically-derived nicotine, including nicotinic alkaloids and nicotine analogs.

“Packaging” means a pack, box, carton, or container of any kind or any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

“Retailer” means an entity that sells, offers for sale, exchanges, or offers to exchange tobacco products to consumers for any form of consideration. “Retailer” includes an owner or agent of a tobacco retail location.

“Tobacco product” does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration. “Tobacco product” means:

1. Products made or derived from tobacco or nicotine, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means;
2. Any electronic smoking device and any e-liquid that may be aerosolized or vaporized by the device, irrespective of whether the substance contains nicotine; or
3. Any component, part, or accessory listed in this definition’s numbered paragraphs 1 or 2, including filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.

“Tobacco retail location” means any premises where tobacco products are sold or distributed to a consumer, including any store, bar, lounge, café, stand, outlet, vehicle, cart, location, vending machine, or structure.

**8.22.020 Presumptions.** A. A rebuttable presumption exists that a tobacco product is a flavored tobacco product when:

1. Any communication is made by or on behalf of the importer, distributor, manufacturer, or retailer of a tobacco product that the product imparts a taste or odor other than the taste or odor of tobacco; or
2. Any communication is made by or on behalf of the importer, distributor, manufacturer, or retailer that the tobacco product imparts a cooling or numbing sensation.

B. A rebuttable presumption exists that a tobacco product is a flavored tobacco product when a tobacco importer, distributor, retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:

1. Made or makes a public statement or claim that the tobacco product is a flavored tobacco product or that the tobacco product has a minty, numbing, or cooling effect, including by describing the product as “chill,” “ice,” “fresh,” “arctic,” or “frost”;
2. Used or uses text or images, or both, on the tobacco product’s labeling or packaging that indicates or implies that the tobacco product has a flavor other than tobacco; or

3. Taken or takes action directed at consumers that would reasonably be expected to cause consumers to believe the tobacco product is a flavored tobacco product.

**8.22.030 Prohibitions.** No retailer may:

- A. Sell, offer for sale, or possess with the intent to sell or offer for sale a flavored tobacco product;
- B. Display, market, or advertise for sale a flavored tobacco product; or
- C. Label as nicotine-free or sell or market for sale as nicotine-free an e-liquid product that contains nicotine.

**8.22.040 Enforcement.** A. The department of police must enforce the provisions of this chapter.

B. The department of police may conduct random, unannounced inspections at locations where tobacco products are distributed to test for and ensure compliance with this chapter.

**8.22.050 Exceptions.** This chapter does not apply to controlled purchases that are a part of a law-enforcement activity or a study authorized by the department of health under law-enforcement supervision.

**8.22.060 Penalties.** A retailer found to violate this chapter must pay administrative fines as follows.

- A. For the first violation:
  - 1. \$2,500 for the first day of the violation.
  - 2. \$5,000 for each day the violation continues beyond the first day.
- B. For a second or subsequent violation:
  - 1. \$5,000 for the first day of the violation.
  - 2. \$10,000 for each day the violation continues beyond the first day.”

SECTION 3. If any provision of this Ordinance or the application of this Ordinance to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 4. This Ordinance takes effect 42 days after the day on which Section 328J-11.5, Hawai'i Revised Statutes, or any other state statute preempting county ordinances on the sale of tobacco products is repealed.

wassp:misc:015abill01:clm

INTRODUCED BY:

*Yuki Lei K. Sugimura*

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YUKI LEI K. SUGIMURA

## WASSP Committee

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**From:** WASSP Committee  
**Sent:** Wednesday, November 20, 2024 5:03 PM  
**To:** CorpCounselRFLS@co.maui.hi.us  
**Cc:** WASSP Committee  
**Subject:** OCS - WASSP - BILL 156 (2024), TO PROHIBIT RETAILERS FROM SELLING OR MARKETING FLAVORED TOBACCO PRODUCTS AND MISLABELING PRODUCTS AS NICOTINE-FREE (WASSP-15)  
**Attachments:** 015acc01.pdf

Please see attached.

Mahalo,  
WASSP Committee Staff