

# City of Philadelphia



(Bill No. 190804)

## AN ORDINANCE

Amending Chapter 9-600 of The Philadelphia Code, entitled "Service and Other Businesses," to add a new Section 9-638, entitled "Sale of Electronic Smoking Devices in Youth-Accessible Establishments," prohibiting selling and offering for sale certain electronic smoking devices in youth-accessible establishments and fixing penalties; all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 9-600 of The Philadelphia Code is hereby amended to read as follows:

### CHAPTER 9-600. SERVICE AND OTHER BUSINESSES

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§ 9-638. *Sale of Electronic Smoking Devices in Youth-Accessible Establishments.*

(1) *Definitions.* For purposes of this Section, the following terms shall have the following meanings:

*"Adults-Only Establishment."* An establishment that holds an active Adults-Only ESD Establishment License issued pursuant to Section 9-638(6).

*"Department."* The Department of Public Health.

*"Electronic Smoking Device" or "ESD."* Set forth in Section 9-631(1).

(2) *Sale of Electronic Smoking Devices with a Characterizing Flavor Restricted.* Except at an Adults-Only Establishment, no person shall sell or offer for sale, or possess with intent to sell or offer for sale, any Electronic Smoking Device with a Characterizing Flavor, defined as a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during use of an Electronic Smoking Device or of any byproduct produced by the Electronic Smoking Device, including, but not limited to, any taste or aroma relating to fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that an Electronic Smoking Device shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

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(3) *Sale of Electronic Smoking Devices with Nicotine Salt Restricted.* Except at an Adults-Only Establishment, no person shall sell or offer for sale, or possess with intent to sell or offer for sale, any Electronic Smoking Device with nicotine salt.

(a) This Section 9-638(3) shall not apply to Electronic Smoking Devices that contain 20mg/ml or less of nicotine in any form.

(4) *Overriding Clause Restricting the Sale of All Electronic Smoking Devices to Adults-Only Establishments.* If and only if Section 9-638(3) or (3)(a) is held by a court to be illegal, invalid, or unconstitutional, then this subparagraph (4) shall be effective. No person shall sell or offer for sale, or possess with intent to sell or offer for sale, any Electronic Smoking Device, except at an Adults-Only Establishment.

(5) Except at an Adults-Only Establishment, no person shall sell or offer for sale, or possess with intent to sell or offer for sale, any Electronic Smoking Device, unless such Device or category of Devices has been approved by the Department as permitted for sale under this Section. The Department, by regulation, shall provide an expeditious approval process.

(6) *Adults-Only ESD Establishment License.* The Department shall issue and renew an Adults-Only ESD Establishment License, which shall be issued and renewed annually on a calendar year basis, to an establishment that adequately demonstrates via application to the Department on a form developed by the Department that the establishment:

(a) holds a valid Tobacco Retailer Permit issued pursuant to Section 9-631;

(b) does not permit persons under 18 years of age, or persons of such other higher age who are legally prohibited from purchasing an Electronic Smoking Device in the Commonwealth of Pennsylvania as may be established by law, to enter any portion of the establishment, at any time of day;

(c) has a formal, written employee training and compliance protocol for exclusion of persons whose entry is to be restricted in accordance with subsection (6)(b), including implementation of identification checks at entry; and

(d) has cumulatively violated Sections 9-622 (Cigarettes and Tobacco Products) or 9-633 (Sale of Electronic Smoking Devices and Unapproved Nicotine Delivery Products) fewer than two (2) times in the immediately preceding twenty-four (24) month period.

(7) *Enforcement.*

(a) A violation of this Section shall be a Class III offense. Each day a violation continues shall constitute a separate offense. The amount required to be remitted in response to a notice of violation of this Section pursuant to § 1-112 shall be two hundred and fifty dollars (\$250).

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*(b) Any person applying for or renewing a Tobacco Retailer Permit pursuant to § 9-631 shall be denied such permit if the person has violated this Section 9-638 two or more times in the immediately preceding twenty-four (24) month period.*

SECTION 2. This Ordinance shall take effect immediately.

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**Explanation:**

[Brackets] indicate matter deleted.  
*Italics* indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 5, 2019. The Bill was Signed by the Mayor on December 18, 2019.



Michael A. Decker  
Chief Clerk of the City Council