

**BOROUGH OF CHATHAM
BOARD OF HEALTH
MORRIS COUNTY, NEW JERSEY
ORDINANCE NO. BOH 2020-07**

**AN ORDINANCE OF THE BOARD OF HEALTH OF THE BOROUGH OF CHATHAM,
COUNTY OF MORRIS, STATE OF NEW JERSEY ENACTING REGULATIONS ON
RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENTS**

WHEREAS, the Board of Health of the Borough of Chatham wishes to enact regulations governing establishments that sell electronic smoking devices; and

WHEREAS, the Board of Health of the Borough of Chatham finds that the enactment of the aforesaid regulations is necessary to protect the health, welfare and safety of its residents; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Health of the Borough of Chatham, County of Morris, and State of New Jersey as follows:

Section 1. Chapter 308 of the Borough Code entitled “RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENTS” be and hereby is created and added in its entirety as follows:

§ 308-1. Purpose.

The purpose of this chapter is to protect the public’s health and general welfare by licensing and regulating establishments that sell electronic smoking devices.

§ 308-2. Definitions.

For the purpose of this chapter, the following words and terms shall have the meanings herein given them:

BUSINESS

Any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

CHARACTERIZING FLAVOR

A distinguishable flavor, taste, or aroma, including, but not limited to, any fruit, candy, chocolate, vanilla, honey, cocoa, wintergreen, dessert, alcoholic beverage, herb or spice flavoring, that is imparted prior to or during consumption by an electronic smoking device, tobacco product, or other related product, including electronic liquid, or any smoke, aerosol, or vapor emanating from that device or product. An electronic smoking device, any cartridge, or other component of the device or other related product, including liquid nicotine, shall be deemed to have

a characterizing flavor if the device, cartridge, component, or related product is advertised or marketed as having or producing any such distinguishable flavor, taste or aroma. No tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

COMPONENT or PART

Any software or assembly of materials intended or reasonably expected to alter or affect the electronic smoking device's performance, composition, characteristics, and ingredients.

DISTINGUISHABLE

Perceivable by either the sense of smell or taste.

ELECTRONIC LIQUID

Ingredients, liquids, gels, waxes and powders, including, but not limited to, those which may contain nicotine and which may be aerosolized or vaporized when using an electronic smoking device.

ELECTRONIC SMOKING DEVICE

A device that can be used to deliver aerosolized or vaporized nicotine 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 such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "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.

EMPLOYEE

Any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.

EMPLOYER

Any business or nonprofit entity that retains the service of one or more employees.

HEALTH OFFICER

The Westfield Health Officer or his/her authorized designee.

ITINERANT ESTABLISHMENT

A temporary or permanent business operated from a truck, cart, other vehicle, hand-carried portable container or device, or mobile platform or unit.

LICENSE YEAR

A calendar year commencing on January 1 and ending on December 31.

LIQUID NICOTINE

Any solution containing nicotine, which is designed or sold for use with an electronic smoking device.

LIQUID NICOTINE CONTAINER

A bottle or other container of a liquid, wax or gel, or other substance containing nicotine, where the liquid or other contained substance is sold, marketed, or intended for use in an electronic smoking device. "Liquid nicotine container" does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed or intended for use in an electronic smoking device, provided that such cartridge is prefilled and sealed by the manufacturer, with the seal remaining permanently intact through retail purchase and use; is only disposable and is not refillable; and is not intended to be opened by the consumer.

NONPROFIT ENTITY

Any entity that meets Internal Revenue Service (IRS) Internal Revenue Code Section 501(c)(3) as well as any other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain.

MANUFACTURER

Any person, including any repacker and/or relabeler, who compounds, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repacks, relabels or imports electronic smoking devices or electronic liquid.

PERSON

An individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee or any other legal entity.

RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENT

Any establishment that solely sells, distributes, gives, offers or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.

SALE

Every delivery of electronic smoking devices, whether the same is by direct sale or the solicitation or acceptance of an order, including the exchange, barter, keeping and exposing for sale, delivering for value, peddling and possession with intent to sell, distribute, or give.

SMOKING

Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. Smoking also includes the use of an electronic smoking device.

TOBACCO PRODUCT

Any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration and defined in the Federal Food, Drug and Cosmetic Act.

§ 308-3. Prohibition on sales and manufacture.

- A. Only retail electronic smoking device establishments licensed by the Board of Health shall sell and/or manufacture electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- B. It shall be unlawful for a business which holds a retail food establishment license issued by the Board of Health, a license for the retail sale of motor fuel issued by the State of New Jersey, and/or a liquor license issued by the State of New Jersey to sell and/or manufacture electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- C. A business which holds a retail food establishment license issued by the Board of Health, a license for the retail sale of motor fuel issued by the State of New Jersey, and/or a liquor license issued by the State of New Jersey and which sells and/or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine shall comply with this subsection within 60 days of the passage of this section.

§ 308-4. Entry and employment of persons under 21 prohibited.

- A. The entry of individuals under the age of 21 into any portion of a retail electronic smoking device establishment is prohibited.

- B. It shall be the duty of the retail electronic smoking device establishment licensee and his/her employees to verify that an individual entering any portion of the establishment is aged 21 years and older by requesting and examining government-issued photographic identification immediately upon entry of such individual.
- C. No individual under the age of 21 shall be employed by a retail electronic smoking device establishment.

§ 308-5. Sale, distribution, or provision to persons under 21 prohibited.

No person shall sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine to any person under the age of 21 years. Each retailer selling or distributing electronic smoking devices shall verify the age of the purchaser by means of valid government-issued photographic identification that contains the date of birth.

§ 308-6. Location of establishment(s).

No retail electronic smoking device establishment, not presently in operation at the time of the adoption of this section, shall be located within 500 feet of any public recreational field or park or public or private elementary or secondary school.

§ 308-7. Operational requirements.

- A. No person shall sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine in the Borough of Chatham unless an employee of the establishment controls the sale of such product through direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines for the sale of electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine shall be prohibited.
- B. No retail electronic smoking device establishment shall allow an employee to sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine until the employee has confirmed he/she has read this section and state laws pertaining to the sale of electronic smoking devices by signing a form promulgated by the Board of Health, confirming the same. Forms shall be submitted to the Board of Health, and a copy of the form shall be kept on file at the retail electronic smoking device establishment and made immediately available at the request of the Health Officer. All retail electronic smoking device establishments shall comply with this provision 60 days after adoption of this section. It shall be the duty of the licensee to ensure that all new employees comply with this section within one week of hire.

- C. No retail electronic smoking device establishment shall distribute, or cause to be distributed, any samples or permit sampling of electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- D. No retail electronic smoking device establishment shall use any device to mask or conceal any characterizing flavor of any electronic liquid and/or tobacco product.
- E. A retailer of electronic liquid containers must comply with provisions of N.J.S.A 2A:170-51.9 et seq., governing child-resistant containers, as may from time to time be amended or supplemented.

§ 308-8. Signage.

- A. Signage shall be conspicuously posted on entry doors to the establishment, which states:

"Entry of persons under the age of 21 is prohibited. Government-issued photographic identification must be presented immediately upon entry."

- B. Signage must be conspicuously posted at the point of display and at the point of sale, which states:

- 1. "A person who sells or offers to sell tobacco products or electronic smoking or vapor devices, components, cartridges or related products to a person less than 21 years of age shall pay a penalty up to \$1,000 and may be subject to a license suspension or revocation. Proof of age may be required for purchase. Those persons or establishments in violation are subject to prosecution."
- 2. "Smoking, sampling or using tobacco products or electronic smoking or vapor devices inside this place of business is prohibited by NJ state law. Those establishments or individuals in violation are subject to prosecution."

§ 308-9. License, application, fees, display and transferability.

- A. No person shall conduct, maintain, or operate a retail electronic smoking device establishment without first submitting an application for licensure on forms promulgated by the Board of Health.
- B. . The collection of fees for licenses is hereby authorized as set forth in Chapter 280, Fees for Certain Permits and Licenses, Board of Health.
- C. Licenses issued under the provisions of this section shall expire annually on December 31 of the year in which the license was issued.

- D. Applications for license renewal shall be submitted to the Board of Health no less than 60 days prior to expiration.
- E. At the time of the initial application and any subsequent renewals, the applicant or the licensee shall:
 - 1. Disclose if they are also a manufacturer or distributor of electronic smoking devices and if that part of their business is conducted or takes place at the retail electronic smoking device establishment or another location(s).
 - 2. Provide contact information for the manufacturer or distributor or other business(es) where electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine are purchased.
- F. Licenses shall be posted in a conspicuous location where they may be readily observed at eye level by all patrons before or immediately upon entering the establishment. No portion of the license shall be obstructed from view during display.
- G. It shall be unlawful for any person to erase, cancel, deface, or alter a license once it has been issued by the Board of Health.
- H. The owner or person in charge of an establishment shall permit any Borough official, inspector or police officer who has presented proper identification to fully examine any license issued under this section.
- I. No licenses shall be issued to itinerant establishments.
- J. Licenses and/or permits are not transferable and are not prorated. Any establishment that changes ownership must submit a new application and receive a new license and/or permit prior to the opening of the establishment.

§ 308-10. Use of license fees.

The funds collected by the licensing of such establishments shall be used to fund enforcement of this section and the development and maintenance of smoking prevention and control programs established and/or administered by the Borough of Chatham Board of Health.

§ 308-11. Inspection and access to premises.

- A. The Health Officer or his/her authorized agent shall have the right to inspect any retail electronic smoking device establishment as often as he/she deems it necessary.

- B. Any duly appointed Borough police officer shall be permitted to enter and inspect the premises for compliance with this section.
- C. All parts of the establishment shall be made accessible to the Health Officer or his/her designee and any duly appointed Borough police officer.
- D. It shall be unlawful for any licensee or his/her employee to hinder, impede, or fail to allow the Health Officer or his/her designee or any duly appointed Borough police officer needing to perform an inspection access to all areas of the establishment.

§ 308-12. Revocation or suspension of license; hearing.

- A. Licenses issued under this section may be revoked or suspended by the Health Officer or his/her designee, pending a formal hearing before the Borough Council, for the following causes:
 - 1. Fraud, misrepresentation or false statement in the application for the establishment license.
 - 2. Fraud, misrepresentation or false statement made while operating the licensed business in the Borough.
 - 3. Conducting the licensed business within the Borough in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.
 - 4. An existing or threatened menace to the public health as determined by the Health Officer.
 - 5. The owner and/or operator or any employee refuses to permit, hinders, or obstructs the Health Officer or his/her designee or any duly authorized Borough police officer to inspect the premises or the operations therein.
- B. A person, firm, corporation, or other entity whose license has been revoked shall close the establishment and request all patrons to vacate the premises.
- C. The licensee shall be entitled to a hearing before the Borough Council within a reasonable time, which is not to exceed 15 days, for the purpose of seeking reinstatement of a suspended or revoked license. Written notice of the time and place of such a hearing shall be served upon the licensee by the Health Officer at least three days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking, cancelling, or suspending such license. Notice may be given either by personal delivery thereof to the person to be notified or be deposited in the United States

Post Office in a sealed envelope, postage prepaid, addressed to such person to be notified at the business address appearing upon such license by simultaneous regular mail and certified mail, return receipt requested.

- D. At the hearing before the Borough Council, the licensee shall have an opportunity to answer and may thereafter be heard; and upon due consideration and deliberation by the Borough Council, the complaint may be dismissed; or if the Borough Council concludes that the charges have been sustained and substantiated, it may deny reinstatement of the license and stipulate the conditions required for reinstatement of the license.
- E. If any such license shall have been revoked, neither the holder thereof nor any person acting for him, directly or indirectly, shall be entitled to another license to carry on the same business within the Borough, unless the application for such license shall be approved by the Borough Council.

§ 308-13. Enforcement.

This section shall be enforced by the Borough of Chatham Board of Health and any duly appointed Borough police officer.

§ 308-14. Violations and penalties.

- A. Any person who is found to be in violation of any provision of this chapter shall, upon conviction thereof, be subject to a fine of not less than \$50 nor more than \$2000, and every day in which a violation occurs, shall constitute a separate violation.
- B. These penalties are in addition to any penalties that may be imposed, including, but not limited to penalties imposed by N.J.S.A. 2C:33-13.1 et seq.

Section 2. The ordinance shall take effect immediately upon final passage and publication as in accordance with applicable law.

Section 3. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

Section 4. Any ordinances or parts thereof that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Adopted:

Adopted February 13, 2020

ATTEST:

BOARD OF HEALTH BOROUGH OF CHATHAM

Melanie Politi,
Secretary, Board of
Health

Lisa DeRosa, R.N. President, Board of Health