

**BOROUGH OF PENNINGTON
ORDINANCE 2017-17**

**ORDINANCE REQUIRING LICENSING OF ESTABLISHMENTS
SELLING ELECTRONIC SMOKING DEVICES, AND IMPOSING FEES**

WHEREAS, the Surgeon General has found that electronic cigarettes and related devices pose a significant health risk for youth, and

WHEREAS, in order to assure that these devices are not being sold to under-age individuals, the Board of Health is in need of a means to monitor the establishments where these devices are sold, and

WHEREAS, the licensing of these establishments has been delegated to local authorities by the State of New Jersey,

WHEREAS, adoption of this Ordinance is recommended by the Board of Health of the Borough of Pennington;

NOW, THEREFORE, BE IT ORDAINED, BY THE BOROUGH COUNCIL OF the Borough of Pennington, that Chapter 192 of the Code of the Borough of Pennington, hereafter to be titled Tobacco and Electronic Smoking Devices, is hereby amended by the addition of a new Article IV, Electronic Smoking Devices, as follows:

1. Definitions

Electronic smoking device means an electronic or other powered device that can be used to deliver nicotine or other substances to the person inhaling from the device, including but not limited to, electronic cigarette, cigar, cigarillo or pipe, or any cartridge or other component of the device or related product including but not limited to any substances used in such devices, such as liquids or powders.

Health department means the Health Department.

Health Officer means the Health Officer or designee.

Nicotine delivery product means any product that is designed to deliver nicotine or vapor, including, but not limited to, what are commonly known as "e-cigarettes" or other types of electronic smoking devices, or any cartridge or other component of such device, or related products including but not limited to any substances used in such devices, such as liquids or powders or other forms of tobacco, but excluding United States Food and Drug Administration approved nicotine patches or nicotine chewing gum.

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

Retail electronic smoking device establishment means a physical establishment, duly licensed by the Board of Health, that sells, offers for sale, gives, distributes or furnishes electronic smoking devices designed for consumption through inhalation.

2. Requirements and Prohibitions

A. No person shall sell nicotine delivery products, or electronic smoking devices in the Borough unless an employee of the establishment controls the sale of such products. A person may only sell nicotine delivery products or electronic smoking devices in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines dispensing nicotine delivery products or electronic smoking devices are prohibited.

B. No person or retailer selling tobacco, nicotine delivery products or electronic smoking devices shall allow an employee to sell or distribute such products until the employee has read the Pennington Board of Health Code and state laws pertaining to the sale or distribution of tobacco, nicotine delivery products or electronic smoking devices and has signed a statement that the employee has read such Code and State laws. Form statements will be supplied by the Health Department and the signed original statement shall be filed with the Health Department and a copy shall be kept on file by the retailer and made available for review by the Health Officer or designee.

3. License Required; Fees.

A. No person shall conduct, maintain or operate a retail electronic smoking device establishment that sells, or offers for sale at any cost or no cost, distributes, furnishes or gives electronic smoking devices without first obtaining from the Health Department a license to do so on the premises

B. No itinerant establishments or vendors shall be permitted to obtain an electronic smoking device establishment license.

C. All licensees shall pay an annual electronic smoking license fee as set forth in Chapter 98 of

the Borough Code. License fees will not be prorated for periods of fewer than twelve months.

D. Licenses issued under the provisions of this article, unless forfeited to or revoked by the Board of Health, shall expire annually on the 31st day of January each year or whenever the licensed establishment is no longer operating as a retail electronic smoking device establishment, whichever occurs first. Renewal applications are to be filed on or before January 31 each year.

E. The license shall be posted in a conspicuous place in the licensed premises.

F. All licensing fees shall be paid to the Borough of Pennington.

4. License Transfers

No license is transferrable by sale or otherwise. A license is valid only for the specific premises and person listed thereon.

5. Enforcement.

A. The enforcement authority for this chapter shall be the Chief of Police, Health Officer, or their designees.

B. The Health Officer may, after giving proper identification, inspect any matter, thing, premise, place, person, record, vehicle, incident, or event as necessary to execute all official duties in a manner prescribed by law.

C. It shall be unlawful for any person to molest, willfully oppose, verbally abuse or otherwise obstruct the Health Officer in the enforcement of this chapter, and the Health Officer may request the assistance of the Police Department when necessary to enforce this chapter .

6. Penalties.

Civilian complaints may be filed in Municipal Court against violators of this ordinance. Any person who violates the provisions of this chapter, (including any employee of a tobacco retailer licensed under N.J.S.A. 54:40A-1 et seq.) who actually sells or otherwise provides tobacco products or electronic smoking devices to a person under 21 years of age, shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. Complaint shall be made in the municipal court of Pennington Borough or before such other judicial officer having authority under the laws of the State of New Jersey.

BE IT FURTHER ORDAINED, by the Borough Council of the Borough of Pennington, that Chapter 98 of the Code of the Borough is amended by adding to Miscellaneous Non-Land Use Fees, at new Section 98-30.D:

Annual fee for Electronic Smoking Device Establishment License: \$600. .

BE IT FURTHER ORDAINED, that this Ordinance shall be effective upon passage and publication as required by law.

Introduced: November 13, 2017

Advertised: November 17, 2017

Public Hearing: December 4, 2017

Adoption: December 4, 2017

Final Publication: December 8, 2017

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor