

CITY OF WILDWOOD
Cape May County, New Jersey

ORDINANCE NO. 1298-24

**AN ORDINANCE AMENDING THE GENERAL ORDINANCES OF THE
CITY OF WILDWOOD REQUIRING LICENSING AND REGISTRATION
FOR RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENTS.**

WHEREAS, the Governor of the State of New Jersey signed legislation in January of 2020 that prohibits the sale and distribution of flavored vape products, codified at N.J.S.A. 2A:170-51.5; and

WHEREAS, the City of Wildwood (the "City") has determined to establish a licensure system for those retail businesses engaged in the sale of electronic smoking devices to enforce and monitor compliance with the state statute for the health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners, the Governing Body of the City of Wildwood, County of Cape May, New Jersey that a new Chapter of the General Ordinances of the City of Wildwood is hereby amended as follows:

Section 1.

A new chapter entitled "RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENT REGULATIONS" is hereby created as follows:

§ 1-1 Legislative Findings.

The legislative findings and declarations that are set forth in N.J.S.A. 2A:170-51.5 et seq. regarding public health hazards that are caused by tobacco smoke and electronic smoking devices are incorporated herein by this reference as if set forth at length.

§ 1-2 Definitions.

All definitions of words and terms that are set forth in the N.J.S.A. 2A:170-51.6 are incorporated herein by this reference thereto. Additionally, the following terms shall have the meanings indicated:

CHARACTERIZING FLAVOR

A distinguishable flavor, taste, or aroma, including, but not limited to, any fruit, candy, menthol, mint, 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.

CIGARETTE VENDING MACHINE

A machine capable of dispensing either tobacco product or electronic smoking devices, or both, when a coin, bill, or token is inserted, or a credit card or means of electronic payment is processed.

CODE ENFORCEMENT OFFICER

The City of Wildwood Code Enforcement Official and his/her authorized designee(s).

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, oil(s), waxes and powders, including, but not limited to, those which may contain nicotine and THC, 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.

LICENSE YEAR

A calendar year beginning on May 1 and ending on April 30 of the subsequent year.

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, oil, 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.

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.

NICOTINE

The chemical substance nicotine, whether derived from the natural tobacco leaf or synthesized in a laboratory. "Nicotine" shall also include any synthesized chemical designed to mimic the effects of nicotine derived from the natural tobacco leaf, without regard to the bioavailability of the chemical. The inclusion of synthesized nicotine in liquid nicotine shall create a rebuttable presumption that its inclusion was intended to mimic nicotine found in natural tobacco leaf.

RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENT

Any establishment that sells, distributes, gives, offers, or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine. If a retail electronic smoking device establishment also engages in the sale of tobacco products, it shall also qualify as a tobacco retailer, and be subject to all federal, state and local laws applicable to tobacco retailers.

SELF-SERVICE DISPLAYS

A display or display shelves designed for the customer to serve oneself without the aid of a sales clerk and where the customer is required to pay the cashier upon leaving.

SMOKE or 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, marijuana, or cannabis, 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, snus, or oral nicotine products. "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 RETAILER

Any person or entity that operates a store, stand, booth, concession, or place at which sales of tobacco product are made to purchasers for consumption or use, and shall also mean a person or entity that owns or operates tobacco product vending machines. If a tobacco retailer also sells, distributes, gives, offers, or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine, it shall also qualify as a retail electronic smoking device establishment, and be subject to all federal, state and local laws applicable to retail electronic smoking device establishment.

§ 1-3. Prohibition on sales and manufacture.

- A. Only retail electronic smoking device establishments licensed by the City shall sell and/or manufacture electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- B. A business which, as of the date of passage of this article, sells and/or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine, shall obtain a license from the City on or before May 1, 2024 in tandem with any mercantile license required for operation.

§ 1-4. Compliance with state law and regulations required.

In addition to the requirements set forth in this article, retail electronic smoking device establishments must also comply with any and all federal, state and local laws, ordinances, rules, and regulations including, without limitation, N.J.S.A. 2A:170-51.12, and any bans on products with characterizing flavor(s).

§ 1-5. 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 twenty-one (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.

§ 1-6. Operational requirements.

- A. No person shall sell, distribute, or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine in the City 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 distribute, or cause to be distributed, any samples or permit sampling of electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- C. 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.
- D. 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.

§ 1-7. License, application, fees, display, and transferability.

- A. No person shall conduct, maintain, or operate a retail electronic smoking device establishment without first obtaining a license from the City. License applications will be available from the City Clerk.
- B. No person shall be issued a license under this section unless they have a valid mercantile license and/or any other such approvals, licenses or certifications required by local or state law.
- C. The fee for a retail electronic smoking device establishment license shall be Five Hundred (\$500.00) Dollars, which shall be paid annually.
- D. Licenses issued under the provisions of this section shall last for one calendar year beginning on May 1 and expiring on April 30 of the subsequent year.
- E. Applications for license renewal shall be submitted to the City no less than 60 days prior to expiration.
- F. 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.
- G. 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.
 - H. It shall be unlawful for any person to erase, cancel, deface, or alter a license once it has been issued by the City.
 - I. The owner or person in charge of an establishment shall permit any City official, inspector, or police officer who has presented proper identification to fully examine any operation and license issued under this section.
 - J. Licenses and/or permits are not transferable and are not prorated. Any establishment that changes ownership or tenancy must submit a new application and receive a new license and/or permit prior to the opening of the establishment.

§ 1-8 Inspection and access to premises.

- A. The Code Enforcement Officer or any duly appointed Law Enforcement Officer shall have the right to inspect any retail electronic smoking device establishment as often as he/she deems it necessary.
- B. All parts of the establishment shall be made accessible to the Code Enforcement Officer or any duly appointed Law Enforcement Officer.
- C. It shall be unlawful for any licensee or his/her employee to hinder, impede, or fail to allow the Code Enforcement Officer or any duly appointed Law Enforcement Officer needing to perform an inspection access to all areas of the establishment.

§ 1-9. Revocation, suspension or denial of license; hearing.

- A. Licenses issued under this article may be revoked or suspended by the Code Enforcement Officer, pending a formal hearing before the Hearing Office, 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 City.
 3. Conducting the licensed business within the City 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 Code Enforcement Officer.
 5. The owner and/or operator or any employee refuses to permit, hinders, or obstructs the Code Enforcement Officer or any duly appointed Law Enforcement Officer to inspect the premises or the operations therein.

6. Any establishment convicted of more than two violations in one licensing year, or having five total violations at any time, is subject to permanent license revocation.
- 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. Any person who is denied the issuance of a license or whose license has been suspended and/or revoked shall be entitled to a hearing before the City Hearing Officer within a reasonable time, not to exceed forty-five (45) days from the date of said denial, suspension or revocation, for the purpose of seeking reinstatement or issuance of a license. Such appeal shall be in writing and filed with the City Clerk. The notice of appeal filed with the City Clerk shall contain the name, telephone number and email address of the person filing the appeal as well as the licensee, if applicable, a copy of any prior application(s), notices, suspensions and/or other documents concerning the license and a brief statement outlining the grounds for appeal.
 - D. Upon receipt of such appeal, the City Clerk shall notify the Administrator and City Solicitor of such filing and the City Clerk shall forward a copy of the appeal notice to the Hearing Officer, who shall schedule a hearing on such appeal not sooner than ten (10) nor later than thirty (30) business days following the filing. At the hearing, the licensee shall have an opportunity to answer and may thereafter be heard; and upon due consideration and deliberation by the City Hearing Officer, the complaint may be dismissed; or if the Hearing Officer 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. Following the hearing, the Hearing Officer shall submit their findings and conclusions of law to the Board of Commissioners within fifteen (15) days of the conclusion of the hearing. The Board of Commissioners shall make a final determination by resolution and may, in its discretion, accept, reject or modify the findings and recommendations of the hearing officer.
 - F. 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 City, unless the application for such license shall be approved by the governing body. The City may consider prior revocations and/or suspensions when considering subsequent applications for a particular owner and/or licensee.

§ 1-10. Enforcement.

The provisions set forth under this article shall be enforced by the Code Enforcement Officer or any duly appointed Law Enforcement Officer.

§ 1-11. Violations and penalties.

Any person who violates any provision of this article shall, in addition to revocation or suspension of license as provided for herein, be subject to the following:

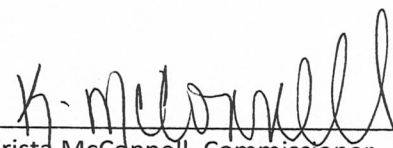
- A. A fine of not less than \$1,000 for the first offense, \$1,500 for the second offense, and \$2,000 for the third and each subsequent offense.
- B. These penalties are in addition to any penalties that may be imposed, including, but not limited to, penalties imposed by N.J.S.A. 2C:33-13.1 et seq. and N.J.S.A. 2A:170-51.4.
- C. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

- D. The violation of any provision of this article shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 2. If any portion of this ordinance is determined to be invalid by a Court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

Section 3. All Ordinances, or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only.

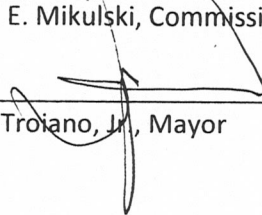
Section 4. This Ordinance shall take effect 20 days subsequent to final passage as provided by law.



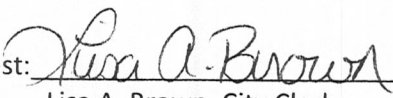
Krista McConnell, Commissioner



Steven E. Mikulski, Commissioner



Ernest Troiano, Jr., Mayor

Attest: 

Lisa A. Brown, City Clerk

The above Ordinance was introduced and passed first reading on July 24, 2024.

Public Hearing on the above ordinance was held on August 14, 2024.

The above Ordinance passed second reading and final passage on August 14, 2024.