

TOWN OF BARRINGTON

Ordinance 2017-7

PART II, GENERAL LEGISLATION

Chapter 170 Sale of Tobacco

The Code of the Town of Barrington is hereby amended as follows:

§ 170-1. Definitions.

Board of licenses means the Barrington Town Council sitting as the Board of License Commissioners.

Characterizing flavor means a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint, or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that 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.

Electronic smoking device means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately.

Electronic smoking device establishment means any business which does not sell food or beverages and for which the principal or core business is selling electronic smoking devices, as evidenced by any of the following: thirty-three percent (33%) or more of floor or display area is devoted to electronic smoking devices; or sixty-seven percent (67%) or more of gross sales receipts are derived from electronic smoking devices.

Flavored tobacco product means any tobacco product, other than a cigarette, that contains a constituent that imparts a characterizing flavor.

Full retail price means the higher of the price listed for a tobacco product on its packaging or the price listed on any related shelving, posting, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price, and before the application of any discounts or coupons.

Package or packaging means a pack, box, carton, wrapping or container of any kind or in which a tobacco product is sold or offered for sale to a consumer.

Person means any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.

Sale or sell means any transfer, exchange, barter, gift, offer for sale, or distribution, in each case for a commercial purpose, in any manner or by any means whatsoever.

Tobacco product means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; and (2) any device that delivers nicotine to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Notwithstanding any provision of clauses (1) and (2) in this definition to the contrary, tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes.

§ 170-2. License required.

It shall be unlawful to sell or to possess with the intention of selling tobacco products within the town without a tobacco dealer's license pursuant to this article. Such license shall be in addition to any other license required by state and/or federal law. A tobacco dealer's license is valid for one person at one location and may not be transferred from one person to another or from one location to another. Failure to obtain and maintain a valid license shall result in a fine of five hundred dollars (\$500). The fee for the tobacco dealer's license shall be fifty dollars (\$50) per year. All licenses granted under the provisions of this article shall be displayed in a conspicuous place within the business so licensed.

§ 170-3. License eligibility.

Licenses shall only be granted to authorize the sale of tobacco products within the town at a fixed location. For example, the sale of tobacco products by persons on foot or from vehicles is prohibited.

§ 170-4. License application; term.

Application for a license shall be submitted to the board of licensees together with an application fee of fifty dollars (\$50). A tobacco dealer's license shall be effective through the thirty-first day of December of the calendar year for which it is issued. No license shall be granted without proof that the applicant has obtained all necessary state licenses for the sale of tobacco products.

§ 170-5. Requirements and prohibitions applicable to licensees.

- (a) A person shall not sell any tobacco product to any individual under the age of twenty-one (21) years.
- (b) No licensee, or employee or agent of such licensee, shall sell or possess with the intention of selling a tobacco product to another person who appears to be under the age of thirty (30) years without first examining a photographic identification of the recipient, which includes a

date of birth, to confirm that the recipient is at least the minimum age under this section to purchase the tobacco product.

- (c) *Display of price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to clearly indicate the price of the product.
- (d) *Packaging and labeling.* No licensee, or employee or agent of such licensee, shall sell any tobacco product unless such product: (1) is sold in the original manufacturer's packaging intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.
- (e) *Prohibition of tobacco coupons and discounts.* No licensee, or employee or agent of such licensee, shall:
 - (1) Accept or redeem, or offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product to a consumer without charge or for less than the full retail price;
 - (2) Sell any tobacco product to a consumer through a multiple-package discount (e.g., "buy-two-get-one-free") or otherwise provide any tobacco product to a consumer for less than the full retail price in exchange for the purchase of any other tobacco product;
 - (3) Provide any free or discounted item to a consumer in exchange for the purchase of any tobacco product.
- (f) *Sale of flavored tobacco products prohibited.* No licensee, or employee or agent of such licensee, shall sell any flavored tobacco product to a consumer. A non-cigarette tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has: (1) made a public statement or claim that the non-cigarette tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate information about the flavor, taste, or aroma of a non-cigarette tobacco product; or (2) taken action directed to consumers that would be reasonably expected to result in consumers believing that the non-cigarette tobacco product imparts a characterizing flavor. Each licensee shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the licensee separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

This subsection (f) shall not apply to an electronic smoking device establishment.

§ 170-6. Suspension or revocation of license - fines and costs.

The Barrington Police Department shall enforce the provisions of this article. If an alleged violation occurs, the Barrington Police Department shall issue a citation that will require the licensee to appear

before the municipal court of the Town of Barrington. If, after a hearing, the court finds that a violation of this chapter has occurred, the court shall impose a civil fine of two hundred fifty dollars (\$250) for the first offense, and five hundred dollars (\$500) for any subsequent offense. Subsequent to a first offense, the court shall refer any violator to the board of licenses for a hearing to show cause why such licensee's license should not be suspended or revoked. The board of licenses may suspend or revoke such tobacco dealer's license for a violation of this chapter subsequent to a first offense. If a licensee maintains its license for thirty-six (36) consecutive months without a violation, any new violation shall be treated as a first offense. It is the intent of this legislation that all fines collected by the town hereunder shall be used by the Barrington Police Department for the purpose of conducting tobacco product compliance checks.

§ 170-7. Use of premises during license suspension.

During the period of any suspension of a tobacco dealer's license, the licensee shall remove all tobacco products from the retail display area of the location and secure them in a locked area for the duration of the suspension. If, at any time during the suspension period, the licensee is found to be selling, distributing, or delivering any tobacco products, the license shall be revoked.

§ 170-8. Severability.

If any provision of this article, or application thereof to any person or circumstances, is held unconstitutional, illegal, or otherwise invalid, the remaining provisions of this article and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

This ordinance shall take effect ninety (90) days following its passage.

Council Member

Filed: April 25, 2017

Introduced: May 1, 2017

Amended: June 5, 2017

Adopted: June 5, 2017
