

**ORDINANCE NO. 2023-3380
TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

AN ORDINANCE BANNING SMOKE SHOPS AND VAPE SHOPS AS A PERMITTED USE IN ANY ZONE DISTRICT IN THE TOWNSHIP OF MIDDLETOWN AND REQUIRING LICENSURE FOR ALL PRE-EXISTING SMOKE SHOPS AND VAPE SHOPS AND FOR THE PRE-EXISTING SALE OF ELECTRONIC SMOKING DEVICES AND SMOKING DEVICE PARAPHERNALIA IN BUSINESS ESTABLISHMENTS

WHEREAS, the Township of Middletown (the "**Township**") has authority to regulate land uses within its municipal boundaries under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. and the police power, N.J.S.A. 40:48-1, et seq.; and

WHEREAS, pre-existing smoke shops and vape shops and establishments that sell electronic smoking devices and electronic smoking device paraphernalia as of the date of the passage of this ordinance from the Township shall be grandfathered in, but shall be required to obtain a license to continue its operation and/or sale of smoking devices and associated paraphernalia as defined herein.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that the Code of the Township of Middletown be and is hereby amended and supplemented, as follows:

SECTION 1. Smoke and Vape Shops/Sale of Smoking Devices and Paraphernalia

This chapter shall govern the licensing and regulation of smoke and vape shops and the sale of smoking devices and paraphernalia.

SECTION 2. Purpose

The purpose of this chapter is to protect the public's health and general welfare by licensing and regulating pre-existing smoke and vape shops, the retail sale of smoking devices and paraphernalia, and to ensure that smoking devices and paraphernalia are not sold to minors.

SECTION 3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ELECTRONIC SMOKING DEVICE - An electronic device that 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" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

SMOKING DEVICE PARAPHERNALIA - Cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, bong, pipes, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices. This definition does not apply to tobacco products and products intended for use with tobacco such as rolling papers.

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

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.

SALE - Every delivery of smoking devices and paraphernalia, whether the same is by direct sale or the solicitation or acceptance of an order, including the exchange, barter, traffic in, keeping and exposing for sale, displaying for sale, delivering for value, peddling and possessing with intent to sell.

RETAIL VAPING AND SMOKING ESTABLISHMENT - A location at which a business entity has been licensed to sell smoking devices and paraphernalia as an ancillary sale.

SMOKE SHOP - Any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia, including an area for smoking tobacco products. An area for smoking shall mean inhaling or exhaling of smoke.

VAPE SHOP - Any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, or marketing of electronic smoking devices, liquid nicotine containers or vapor product as defined by N.J.S.A. 26:3D-57, N.J.S.A. 2A:170-51.9(a)(2), N.J.S.A. 2A:170-51.9(a)(3) and N.J.S.A. 2A:170-51.9(a)(4), including an area for vaping. An area for vaping shall mean inhaling or exhaling smoke or vapor from any electronic smoking device.

SECTION 4. Licensing Requirements

- A. No person and/or entity shall conduct, maintain or operate a Smoke Shop or Vape Shop without first obtaining a License from the Township. License Applications will be available from the Township Health Officer.
- B. No business shall sell smoking devices and/or paraphernalia without first obtaining a license as a Retail Vaping and Smoking Establishment from the Township. License Applications will be available from the Township Health Officer.
- C. No person and/or entity shall be issued a License under this Section if they are unable to pass a criminal background check.

SECTION 5. Application for License

The initial application and all subsequent renewals shall include the following information:

- A. Name and contact information of the owner. If the applicant is a corporation or a partnership, then the names and addresses of each individual holding 10% or more interest in the corporation or partnership shall be provided.
- B. Address of the Smoke Shop and/or Vape Shop.
- C. Address of business establishment applying as a Retail Vaping Establishment.
- D. Identify if they are retailers and/or manufacturers of electronic smoking devices.

E. Provide a general inventory list of smoking devices and paraphernalia.

SECTION 6. Requirements for Licensees

- A. All licenses issued shall be posted in a visible location that can be viewed by all patrons entering the establishment.
- B. Every entrance door of a Smoke or Vape Shop shall have a minimum size of 8 ½" x 11" sign posted at eye-level height which reads, "Entrance prohibited by those under the age of 21." Said sign shall be securely fastened to an entrance door and consist of letters with a font size of 48" or greater and the sign shall be in color as designated by the Township Health Officer.
- C. There shall be no other signs or signage visible from the exterior advertising any products, sales or promotions, other than signs depicting the name of the business, in accordance with applicable Township sign regulations.
- D. Anyone intending to purchase upon entering a Smoke or Vape Shop shall promptly be required to produce photographic identification. Any person who fails to produce such identification shall promptly be escorted from the Smoke or Vape Shop. Before concluding an smoking device and/or paraphernalia sale, every purchaser shall produce photographic identification.
- E. All employees of a Smoke or Vape Shop shall be at least the age of 21. Before an employee engages in the sale of electronic smoking devices or paraphernalia, a business principal shall first submit certification on a Form provided by the Township Health Officer that the employee was instructed with respect to requirements of this Chapter and all New Jersey Statutes and Regulations concerning the sale of electronic smoking devices and paraphernalia.

SECTION 7. Transferability.

Licenses are non-transferable. Any Smoke Shop or Vape Shop or Retail Vaping Establishment licensed hereunder that changes ownership shall be required to submit a new application and receive approval of same prior to operation.

SECTION 8. Suspension and Revocation of License

Any license issued hereunder may be suspended by the Township Health Officer for any infraction or violation of the terms of the license, or any of the Township ordinances or State and Federal Statute, or falsification in applying for a license. The suspension shall become effective immediately and shall state that opportunity for a hearing will be given at a time, within 16 days from date of notice, before the Township Administrator, which, upon a finding of such violation, may revoke the license, and, in event of failure of the licensee to appear, the license shall automatically be revoked and canceled.

SECTION 9. Conditions of License

Upon the expiration of any license issued under the provisions of this chapter, the holder thereof shall surrender the same to the Township Health Officer within 24 hours. Upon notice of the cancellation or revocation of any license issued under the provisions of this chapter, the holder shall surrender the same to the Township Health Officer within 24 hours after notice of such cancellation.

Section 10. Violations and Penalties

Any person adjudicated as having violated any provision of this chapter shall be subject to the penalties set forth under § 1-4 of the Township Code.

Section 11. Chapter 240 of the Code of the Township shall be amended and supplemented, as follows:

Smoke and Vape Shops and Sale of Smoking Devices and Paraphernalia.

The following fees are hereby established for Smoke and Vape Shops/Sale of Smoking Devices licensed under Chapter ____ of the Township Code:

- A. Annual fees associated with the licensing requirement for Smoke Shops and Vape Shops shall be: \$1,000.
- B. Annual fees associated with the licensing requirement as a retail vaping establishment shall be: \$1,000.
- C. All licenses issued under this Section shall be valid for one calendar year, beginning January 1, and expiring on December 31, beginning January 1, 2024. Licenses must be obtained for the remainder of 2023 by October 1, 2023, and there will be no fee for 2023.
- D. All applications for license renewals shall be submitted to the Township no less than 60 days prior to expiration. Failure could result in non-renewal.

Section 12. Chapter 540 of the of Planning and Development Regulations within the Code of the Township, Appendix A, is hereby amended and supplemented by adding to the list of prohibited uses, the following:

“Smoke shops”
“Vape shops”

“Sale of smoking devices and paraphernalia”

Section 13. Chapter 540 Planning and Development Regulations within the Township Code, Appendix A, is hereby amended and supplemented by adding to the list of permitted uses, the following:

Pre-existing “Smoke shops” and “Vape shops”, provided that they obtain a license within 60 days of the date of adoption of Ordinance 2023-3380 by the Township.

Pre-existing sale of smoking devices and paraphernalia in business establishments provided that they obtain a license as a “Retail Vaping and Smoking Establishment” as defined herein within 60 days of the date of adoption of Ordinance 2023-3380 by the Township.

SECTION 14. Repealer

All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed. All portions of the ordinance not modified herein remain in full force and effect.

SECTION 15. Severability

Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION 16. Effective Date

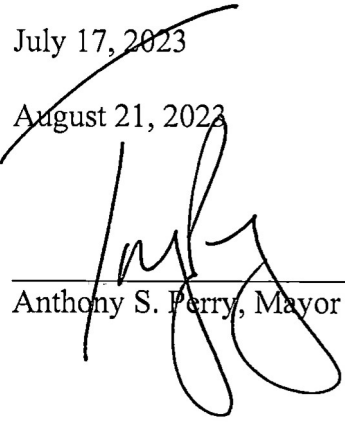
This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.

PASSED ON FIRST READING:

July 17, 2023

PASSED AND APPROVED:

August 21, 2023



Anthony S. Perry, Mayor

ATTEST:



Heidi R. Pieluc, Township Clerk