

**ORDINANCE ____-2017
OF THE GOVERNING BODY
OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, IN THE COUNTY
OF PASSAIC AND STATE OF NEW JERSEY, AMENDING CHAPTER IV,
GENERAL LICENSING, OF THE CODE OF THE BOROUGH OF
BLOOMINGDALE TO ADD A NEW SECTION 4-17, ELECTRONIC SMOKING
DEVICE LICENSING**

WHEREAS, the Borough Code currently sets forth certain licensing requirements; and

WHEREAS, with the increasing popularity of e-cigarettes and vaping devices, the Borough Council is aware that establishments have opened in other municipalities that specialize in the sale of electronic smoking devices and providing a venue in which customers may engage in the use of such devices; and

WHEREAS, the purpose of this amendment to the Code is to license establishments that sell electronic smoking devices and related products. This license will help the Borough of Bloomingdale to ensure compliance with State law that bans the sale, furnishing or giving of tobacco products and electronic smoking devices to persons under age 19, with any local ordinance of the Borough of Bloomingdale that increases such minimum age, and with the 2016 State law, N.J.S.A. §2A:170-51.9 *et. seq.*, that requires child-resistant packaging of refills for these devices. The funds collected by licensing of such establishments shall be used to fund the development and maintenance of programs related to tobacco cessation, prevention and control as may be established and/or administered by the Bloomingdale Health Department.

WHEREAS, the Borough Council, Borough Department of Health and Borough Attorney have reviewed the current Code and determined that it is necessary to amend the Code to establish licensing requirements for all establishments selling, dealing or providing a venue for the use of electronic smoking devices; and

NOW THEREFORE BE IT ORDAINED, by the Council of the Borough of Bloomingdale, in the County of Passaic, and State of New Jersey, as follows:

SECTION 1. A new section shall be added to Chapter 4 as follows:

4-17 RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENTS

4-17.1 Definitions

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning stated herein unless their use in the text of this section clearly demonstrates different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number shall include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Electronic Smoking Device shall mean 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, an electronic cigarette, cigar, cigarillo or pipe, or any

cartridge, refill or other component of the device or related product, including but not limited to refills such as liquids, gels, waxes and powders.

License Year shall mean the time period covering June 1st through May 31st of the year for which a license is issued pursuant to this Ordinance.

Retail Electronic Smoking Device Establishment shall mean any establishment that sells, distributes, gives or offers for sale Electronic Smoking Devices designed for consumption through inhalation.

Sale shall mean 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, traffic in, keeping and exposing for sale, displaying for sale, delivering for value, peddling and possession with intent to sell, distribute or give.

4-17.2 Licensing Fees

- A. No person shall conduct, maintain or operate a Retail Electronic Smoking Device Establishment that sells, distributes or gives Electronic Smoking Devices without first obtaining from the Bloomingdale Health Department a written license approved to do so.
- B. Fees in accordance with the following schedule shall be paid before any license required in this article shall be issued:

Electronic Smoking Device Establishment License	\$750.00
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The fee for each initial license per retail location issued to a licensee pursuant to this section shall be an amount proportionate to the number of months remaining in the License Year including the month in which the license is issued (for example, a License issued to a new licensee in February shall be one third of \$750.00 (\$250.00)).

- C. Licenses issued under the provisions of this article, unless forfeited or revoked by the Bloomingdale Health Department, shall expire annually on the 31st day of May of each year. In order to continue selling Electronic Smoking Devices in the next License Year, the Retail Electronic Smoking Device Establishment shall apply for a renewal of their License for each retail location at least 90 days prior to expiration of the current License Year, and the annual License renewal fee is \$750 per Retail Electronic Smoking Device Establishment location.
- D. At the time of the initial application and any subsequent renewals, or at the discretion of the local health department, License holders shall:
 - 1) Disclose if they are also a manufacturer, wholesaler and distributor of Nicotine Electronic Smoking Devices as defined above (which includes related products, components, refills, etc.), and if that part of their business is conducted or takes place at the same location as the Retail Electronic Smoking Device Establishment or another location(s) as noted in the initial application or subsequent renewals. If such business takes place at a different address(s) in

the Borough of Bloomingdale, the said Retail Electronic Smoking Device Establishment shall disclose such address(s) in the Borough of Bloomingdale.

- 2) Provide any and all contact information, including but not limited to company name, company contact name, address, phone, website and email, regarding any and all sources of their Nicotine Delivery Products for sale or distribution. This includes but is not limited to information regarding any and all Nicotine Delivery Product suppliers, manufacturers, wholesalers, distributors, etc., including those based in the Borough of Bloomingdale.
- E. No license is transferrable by sale or otherwise.
- F. Such license shall be posted in a conspicuous place in such establishment. No itinerant establishments shall be permitted to obtain an Electronic Smoking Device Establishment License.
- G. All licensing fees shall be paid to the Borough of Bloomingdale to offset budget appropriations in connection with education and enforcement of this ordinance and/or the States Tobacco Age of Sale Inspection Program.

4-17.3 Sale Requirements

- A. No person shall sell, distribute or give Electronic Smoking Devices in the Borough of Bloomingdale unless an employee of the establishment controls the sale of such products. A person may only sell Electronic Smoking Devices in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines of Electronic Smoking Devices shall be prohibited.
- B. No person shall sell, distribute, or give Electronic Smoking Devices to any person under the age of 21 years.
- C. No Retail Electronic Smoking Device Establishment shall allow the retailer, employee or any other person to sell, distribute or give such products until the retailer, employee or other person has read the Bloomingdale Ordinances and State laws pertaining to the sale of Electronic Smoking Devices and has signed a statement that they have read such ordinances and State laws. Such form statement will be supplied by the Bloomingdale Health Department and all signed original statements shall be kept on file by the Retail Electronic Smoking Device Establishment and made immediately available at all times for review by the Bloomingdale Health Department. All Retail Electronic Smoking Device Establishments shall be in compliance with this provision by the effective date noted in section IX.
- D. The sale of any Electronic Smoking Device refill including but not limited to any and all liquids, gels, wax or powders, and whether or not such refill contains nicotine, that is intended for human consumption and is not contained in packaging that is child-resistant is prohibited as set forth in N.J.S.A. §2A:170-51.9 *et seq.*

- E. License holders can only do in-person marketing and sales of Electronic Smoking Devices at their Retail Electronic Smoking Device Establishment. There shall be no cross marketing or sales at nonregistered retail locations and mobile locations, including but not limited to, street fairs, local fairs, festivals, etc.

4-17.4 Enforcement

- A. This section shall be enforced by the Bloomingdale Health Department and/or other municipal officials of the Borough of Bloomingdale.
- B. Any person found to be in violation of this ordinance shall be ordered to cease the sale of Electronic Smoking Devices immediately.

4-17.5 Violations and Penalties

- A. Unless otherwise provided by law, statute or ordinance, any person(s) who is found to be in violation of the provisions of this section shall, upon conviction thereof, pay a fine of not less than \$250 (OPTION - \$500) for the first violation, not less than \$500 (option - \$750) for the second violation, and not less than \$1,000 for third and each subsequent violation. ***Each violation, and every day in which a violation occurs, shall constitute a separate violation.*** No fines shall be issued for sixty (60) days after publication of this ordinance.
- B. In addition any violator of this section shall be subject to having any Borough license held by the violator, suspended, revoked or fined. No such action may be taken unless the requirements of due process are satisfied.
- C. These penalties are in addition to any penalties that may be imposed including but not limited to penalties imposed by the New Jersey Code of Juvenile Justice, N.J.S.A. §2A:170-51 *et seq.* and N.J.S.A. 2C:33-13.1 *et seq.*
- D. Fines and sanctions associated with this section shall be dedicated and forwarded to the Bloomingdale Health Department to be used in connection with education and enforcement of this ordinance. The monies shall be maintained by the Chief Financial Officer or Comptroller of the Borough of Bloomingdale.

SECTION 2. All ordinances or parts of ordinances of the Borough of Bloomingdale inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

SECTION 4. This law shall take effect immediately upon final passage, approval and publication as required by law.

BOROUGH OF BLOOMINGDALE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ATTEST:

Jane McCarthy, Clerk

By: _____
Jonathan Dunleavy, Mayor