

TOWNSHIP OF MONTVILLE

ORDINANCE NO. 2017-17

AN ORDINANCE OF THE TOWNSHIP OF MONTVILLE, COUNTY OF MORRIS, AND STATE OF NEW JERSEY REPEALING AND AMENDING CHAPTER 348, TOBACCO, OF THE CODE OF THE TOWNSHIP OF MONTVILLE, NEW JERSEY

BE IT ORDAINED, by the Township Committee of the Township of Montville, in the County of Morris, and State of New Jersey, as follows:

SECTION 1. Chapter 348, Tobacco, Section 348-1, Definitions, of the Code of the Township of Montville is hereby amended, in its entirety, to read as follows:

§348-1 Definitions.

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

ELECTRONIC SMOKING or VAPOR DEVICE

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, hookah, pipe or any cartridge or other component of the device or related product.

ELECTRONIC SMOKING or VAPOR DEVICE ESTABLISHMENT

Any establishment, person, entity or business that sells electronic smoking or vapor devices including, but not limited to, an electronic cigarette, cigar, cigarillo, hookah, pipe or other smoking or vapor device, or any cartridge or other component of the device or related product.

INDOOR PUBLIC PLACE

Any area of a structurally enclosed place of business, commerce, or other service-related activity, whether publicly or privately owned, or operated on a for-profit or non-profit basis, which is accessible to the public, including, but not limited to: a commercial or other office building; office or building owned, leased, or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption upon the premises, including in the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L. 1971, c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L. 1983, c.492 (C.30:5B-1 et seq.); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; a passenger elevator in a building other than a single-family dwelling; or any exterior area if smoking in said area results in migration, seepage, or recirculation of smoke into an indoor public place as described in this definition. The time of entry allowed into an indoor public place by workers or members of the public is irrelevant to the issue of whether the area is deemed

accessible to the public.

PERSON

An individual, firm, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee or any other legal entity, and their agents, representatives, and employees.

SALE

Delivery of tobacco and/or electronic smoking or vapor 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.

SELF-SERVICE CIGARETTE OR TOBACCO PRODUCT DISPLAY

Any shelving or storing of cigarettes or tobacco products in an area of the establishment to which customers have access and/or in a location where the customer could reach the cigarettes or tobacco products and take same without the assistance of an employee of the establishment.

SMOKING

The heating, igniting, or burning of a tobacco product, inhaling smoke or vapor from, exhaling smoke or vapor from, or the possession of a lighted cigar, cigarette, cigarillo, electronic smoking device, hookah, pipe, water pipe, vapor device, or any other matter or device which contains tobacco or any other matter or substance that can be smoked or inhaled.

TOBACCO PRODUCTS

Any product made from the tobacco plant for the purpose of smoking, chewing, inhaling, and any other personal consumption, including cigars, smokeless or chewing tobacco, pipe tobacco, snuff, and cigarettes in any form, and any matter or substance which contains tobacco or nicotine, and any other matter or substance that can be inhaled or exhaled as smoke or vapor from any device or delivery system, and any component, part, accessory of a tobacco product.

TOBACCO RETAIL ESTABLISHMENT

Any establishment, or area inside of an establishment, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere, including, but not limited to, cigar bars, cigar lounges, hookah bars, and hookah lounges, and any establishment in which at least 51% of retail business is the sale of tobacco products and accessories, including, but not limited to, cigarettes, cigars, cigarillos, chewing tobacco, hookahs, pipes or other smoking device, and in which the sale of other products is merely incidental.

VENDING MACHINE

Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or other tobacco products, and/or electronic smoking and vapor devices.

SECTION 2. The remaining sections of Chapter 348, Tobacco, of the Code of the Township of Montville are hereby repealed and amended, in their entirety, to read as follows:

§348-2 Right of entry.

The Department of Health, Police Department, and any other designated Montville Township official shall, as often as is necessary, inspect premises within the Township for the purpose of determining compliance with the provisions of this Chapter. It shall be unlawful for any person to deny entry to or to deny full access of the entire premises to such officials, or to hinder such officials in any manner,

§348-3 Smoking inside any indoor public place prohibited.

Smoking of any kind, for any reason, is prohibited in any indoor public place.

§348-4 Vending machines sales and self-service sales.

A. It is unlawful for any person to offer for sale, or to give or furnish, any tobacco product or electronic smoking or vapor devices or related accessories through a vending machine unless the machine meets the following requirements for operations:

1. The operation of the vending machine to dispense tobacco products is possible only by the activation of an electronic switch or electronic device, which is controlled by the proprietor of the establishment or an employee designated by the proprietor, which employee is over the age of 19 years. The electronic switch or device, which activates the machine, shall operate in such a fashion that the vending machine shall remain in the off position until activated for each individual sale.
2. The proprietor or employee shall, before activating the machine, make the determination by examination of two (2) forms of identification, including a photo identification, that the person wishing to use the machine is 19 years of age or older.
3. The vending machine must be located in the establishment within the line of sight of the person responsible for operating the locking device.

B. Self-service cigarette or tobacco product or electronic smoking or vapor device product displays are prohibited, and it is unlawful to offer for-profit or not-for-profit cigarettes or tobacco products or electronic smoking or vapor device products from self-service displays of same.

§348-5 License required; fees; inspections.

A. It shall be unlawful for any person(s) to operate, carry on, or conduct an electronic smoking or vapor device establishment, or tobacco retail establishment, as defined in this Chapter, without first having procured a license to do so from the Health Officer as outlined in §348-6 and §348-7.

B. The annual license fee to be paid for an electronic smoking or vapor device establishment shall be as provided in Chapter 169, Fees.

C. Electronic smoking or vapor device establishments and tobacco retail establishments are subject to periodic compliance inspections by the Health Department. Fees for the re-

inspection of any establishment which is necessitated by violations of any of the provisions set forth in this Chapter observed during an initial inspection shall be as provided in Chapter 169, Fees.

D. Electronic smoking or vapor device establishments and tobacco retail establishments must be conducted inside a place of business located within a retail zone. A license will only authorize sales of related devices and/or products at the place of business identified on the application.

E. It shall be unlawful for an electronic smoking or vapor device establishment or a tobacco retail establishment to conduct any business, including allowing the use or sampling of the devices or related products, outdoors within 50 feet of the establishment.

§348-6 Application for license; renewal license.

A. Application for an electronic smoking or vapor device establishment license or a tobacco retail establishment license shall be submitted on forms to be furnished by the Health Department. The application shall be accompanied by the applicable license fee in cash, check or money order.

B. A renewal license may be applied for by a licensee for premises licensed during the previous licensed period.

C. Each and every applicant for a license for an electronic smoking or vapor device establishment or tobacco retail establishment shall set forth the following information in writing:

1. The applicant's name, business name, business address, applicant's phone number and the business's phone number.
2. The applicant's email address.
3. If the applicant is an individual, the applicant's residential address.
4. If the applicant is a partnership, corporation, limited liability corporation, or any other type of business entity, the applicant shall set forth the full name and residence address of each partner, member or officer of the business entity.
5. If the applicant is a partnership, corporation, or limited liability company, the applicant must submit a certificate from the State of New Jersey that the business entity, regardless of form, is in good standing, according to the records of the State of New Jersey.

§348-7 Issuance of license; contents; expiration date.

A. The granting of an electronic smoking or vapor device establishment license or tobacco retail establishment license shall be by the Health Officer. The Health Officer shall not issue or renew a license until he/she has confirmed that the establishment is in compliance with all provisions set forth within this article.

B. The license shall state:

1. Date of issuance.
2. Name of establishment.
3. Name of owner.
4. Purpose for which issued.
5. Location of licensed premises.

C. The term of the license shall be for one year, commencing from the date of issuance of the license and expiring December 31st of that calendar year.

§348-8 License not transferable; display of license.

A. A license issued under this article shall not be transferable to any other person or to any other location by sale or otherwise.

B. The issued license shall be conspicuously displayed at all times on the licensed premises.

§348-9 Restrictions, signage.

A. No person, either directly or indirectly by an agent or employee, shall sell, offer for sale, offer for sample, distribute for commercial purposes at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 19 years of age, any electronic smoking or vapor device or tobacco product that can be used to deliver nicotine or any other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, hookah, pipe or device of another form, or any cartridge or other component of the electronic smoking or vapor device or related products in any location, whether licensed or not.

B. An electronic smoking or vapor device establishment or tobacco retail establishment must require proof of age from any customer who is of the appearance of 26 years of age or younger. Proof must come in the form of a valid government issued photo ID.

C. Signage must be conspicuously posted at the point of display and at the point of sale. The sign must state the following in English with letters no less than 1 inch in size as follows:

1. "A person who sells or offers to sell tobacco products or electronic smoking or vapor devices, components, cartridges or related products to a person less than 19 years of age shall pay a penalty of up to \$1,000 and may be subject to a license suspension or revocation. Proof of age may be required for purchase. Those persons or establishments in violation shall be prosecuted."
2. "Smoking, sampling or using tobacco products or electronic smoking or vapor devices inside this place of business is prohibited by NJ State law. Those establishments or individuals in violation shall be prosecuted."

§348-10 Suspension or revocation of license.

A. Licenses issued under this chapter may be revoked or suspended by the Board of Health, after a public hearing. Reasons for automatic suspension or revocation of an establishment license include but are not limited to the following:

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 Township.
3. Conducting the licensed business within the Township 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. The owner and/or operator or any employee refuses to permit any duly authorized Township Police Officer or health official to inspect the premises or the operations therein.
5. Any violation of this chapter.

B. In addition to any penalty prescribed, any license under this Chapter is subject to revocation for violating any provision of this Chapter or where the operation of the licensed premises is otherwise detrimental to the preservation of the health, safety and welfare of the public. The Township Department of Health shall serve the licensee with a written complaint setting forth specifically the grounds of the complaint along with a notice indicating the time and place to appear before the Board of Health for a hearing. Such service shall be made by personal service or certified and regular mail at least ten (10) days before the hearing date. The Board of Health after such hearing may revoke the license. If the license-holder does not appear at the hearing, said non-appearance shall be considered acceptance of the charges and the license shall be suspended or revoked as detailed in this Chapter.

C. Should it be determined that the conduct of the licensee is detrimental to the health, safety and general welfare of the public, such establishment's license may be suspended by the Health Officer or designee and the establishment shall close until all violations are corrected. The Health Officer may also recommend revocation of the license and suspend the license pending the revocation hearing before the Board of Health referred to in section B. above. This hearing must be concluded within forty-five (45) days of the date of the suspension and closure of the establishment.

§348-11 Enforcement.

The Health Department, Police Department, and any other designated Montville Township official shall implement, administer, and enforce this Chapter, and are hereby authorized to issue all rules and regulations consistent with this Chapter, and shall have all necessary powers to carry out the purposes of this Chapter and to enforce this Chapter, and are authorized to issue citations for any violation of this Chapter.

§348-12 Violations and penalties.

A. Any person violating the provisions of this chapter shall, upon conviction thereof, be subject to a fine of not less than \$250 for the first offense, not less than \$500 for the second offense, and not less than \$1,000 for the third and each subsequent violation.

B. Each and every day that a violation of this Chapter is found to exist shall constitute a unique and separate violation of this Chapter.

SECTION 3. All Ordinances of the Township of Montville, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 5. This Ordinance may be renumbered for purposes of codification.

SECTION 6. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

**TOWNSHIP OF MONTVILLE
COUNTY OF MORRIS
STATE OF NEW JERSEY**

ATTEST:

Gertrude Atkinson, Township Clerk

James Sandham, Jr., Mayor

Introduced: March 28, 2017
Public Hearing: April 25, 2017
Adopted: